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No. 604

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

BERTRAND A. O. TYSON, M.D.,
Petitioner,

versus

STATE OF LOUISIANA
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana
Attorney for Petitioner

Smith, Waltzer, Jones and Peebles
for Louisiana Civil Liberties
Suite 1006, Baronne Bldg.
New Orleans, Louisiana
of Counsel

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Petitioner respectfully prays that a Writ of Certiorari issue to review the decree of the Supreme Court of Louisiana entered in the above mentioned cause on June 28, 1965, which denied petitioners application for Writs of Certiorari, Mandamus and Prohibition, thus affirming the conviction of petitioner rendered by the Nineteenth Judicial District Court of East Baton Rouge Parish, Louisiana (herein called Louisiana District Court) on June 2, 1965.

OPINIONS BELOW

The United States District Court for the Eastern District of Louisiana, Baton Rouge Division, remanded the removal of petitioners prosecution. (Appendix A) Petitioner appealed this order of remand to the United States Court of Appeals for the Fifth Circuit. That court vacated its order to stay the state prosecution pending

the appeal of the order of remand. (Appendix B & C) This court, by Justice Hugo L. Black, denied petitioners application for a stay of the state prosecution pending appeal of the order of remand on May 28, 1965. (See T. 104)

The Nineteenth Judicial District Court of East Baton Rouge Parish found petitioner guilty for oral reasons assigned (T. 150-157) on June 2, 1965, and on June 4 of that year, sentenced the petitioner to pay a fine of $100 or spend 60 days in the Parish jail in lieu thereof, and to four months in the Parish jail in addition to the fine. Since the sentence did not reach 6 months and/or the fine exceed $300, under Louisiana law the petitioner had no right of appeal from his conviction.[1] Petitioner then proceeded by discretionary application, to obtain a review of the record. The Supreme Court of Louisiana denied petitioners application for Writs of Certiorari, Mandamus and Prohibition on June 28, 1965. (Appendix I)

JURISDICTIONAL STATEMENT

The verdict of the Louisiana District Court was rendered at the close of petitioners trial, June 2, 1965. Petitioners motion for a new trial was overruled on June 4, 1965. Petitioners application to the Supreme Court of Louisiana for Writs of Certiorari, Mandamus and Prohibition was refused June 28, 1965.

The jurisdiction of this court is asserted on the basis of 28 U.S.C. 1257(3).

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[1]At no stage of the state proceeding did the petitioner have a right to a review of the trial proceedings and the decision of the Louisiana District Court. Louisiana Constitution, Article 7, Section 10.

QUESTIONS PRESENTED

I

Whether the application of the Louisiana statute making criminal the Unauthorized Use of a Movable, which, on the face of the statute and according to the intent of the legislature was never meant to apply to a lessee holding over after the expiration of a valid lease, can constitute a "planned prosecutorial abuse" in denial of petitioners rights under the Constitution and laws of the United States.

II

Whether the term "consent" as used in the criminal statute can be judically construed in a manner inconsistent with the terms of the Civil Laws of the State of Louisiana applicable to a lessee holding over after the term of a valid lease without denying petitioner his constitutional right to fair notice.

III

Whether petitioner can be convicted of an unauthorized use of a movable where the statute on its face requires a general criminal intent when he acted pursuant to the terms of a valid civil law giving him the authority to remain in possession and use of the movable.

IV

Whether petitioner can be convicted of the use of a movable without the consent of the owner when no evidence was offered which could support a conviction under the terms of the criminal statute.

V

Whether petitioner, being a member of a class of persons active in efforts to secure full and equal rights for Negroes in the State of Louisiana, is denied the equal

protection of the laws when he is singled out for the application of a criminal statute which on its face clearly shows that it was not meant to apply to a lessee holding over after the expiration of the term of a valid lease.

STATUTE INVOLVED

Petitioner was convicted of continuing in possession and use of an automobile without the authority of its owner in alleged violation of the laws of Louisiana. The applicable statute is Louisiana Revised Statutes, Title 14, Section 68.

> Unauthorized use of movables is the intentional taking or use of any movable which belongs to another, either without the other's consent, or by means of fraudulent conduct practices or representations, but without any intention to deprive the other of the movable permanently. The fact that the movable so taken or used may be classified as an immovable, according to the law pertaining to civil matters, is immaterial.
>
> Whoever commits the crime of unauthorized use of movables shall be fined not more than one hundred dollars, or imprisoned for not more than six months, or both.

STATEMENT

Petitioner is a practicing physician and Negro citizen of Louisiana and of the United States, and was an active leader in protests against discrimination in 1963 and 1964, and in efforts to abolish restrictions on the rights of Negro people to vote and enjoy other benefits of citizenship.

On November 20, 1965, petitioner signed a lease agreement with Avis Rent-A-Car, located in the town of Baton Rouge. Under the terms of the lease he was to have possession and use of the car for three days. (R. 86-A).

Petitioner did not return the car within the appointed time, but continued to possess and use it without interference or complaint from the rental agent until January 4, 1965. At that time petitioner held a telephone conversation with Mr. Roy B. Bowers ,the rental agent for the Avis company. Mr. Bowers requested that petitioner return the car by January 8, 1965. When this was not done, petitioner and Mr. Bowers again communicated by telephone on January 15, 1965. At this time Mr. Bowers demanded that either the car be returned on the following day or he would be forced to "swear out a warrant." Petitioner returned the car on January 21, 1965, (R. 86-A) and was charged the company's monthly rate for the use of the car during the period. (T. 142-145). At no time did the petitioner receive any written notice informing him that the statutory lease period was being terminated.

On January 18, 1965, Mr. Bowers caused a warrant to issue for the arrest of the petitioner under the authority of Mr. Sargent Pitcher, District Attorney of East Baton Rouge Parish. Petitioner was arrested and charged under a Bill of Information, as amended, for the "Unauthorized Use of a Movable" on or about the 18th day of January, 1965.

HOW FEDERAL QUESTIONS WERE RAISED

The federal questions here presented were raised in petitioners application for removal to the Federal Dis-

trict Court, (Appendix D), petitioners affidavit submitted to the Federal District Court, (Appendix E), and petitioners application to the Federal District Court for the production of records (Appendix F). The removal was remanded, by Judge West to the Nineteenth Judicial Court for trial. (Appendix A)

The Federal Questions were again raised in petitioners application to the Court of Appeals for the Fifth Circuit for a stay of the remand order pending appeal (Appendix G.) The application was denied. (Appendix B & C)

Petitioner again raised his federal claims in his motion to quash the Bill of Information (R. 83), at the close of trial (T. 150-152), in his motion for a new trial (R. 94), and in his Bill of Exceptions in support of his application to the Supreme Court of Louisiana for Writs of Certiorari, Mandamus and Prohibition. (R. 54-63).

Petitioners federal claims were thus raised at the earliest opportunity and were renewed at each stage of the proceedings below.

REASONS WHY THIS COURT SHOULD GRANT THE WRIT

This case is but another chapter in the tortious struggle of the Negro people of the State of Louisiana to secure for themselves the full and equal enjoyment of the rights and duties of citizenship of that state and of the United States. It is common knowledge that many methods have been used to discourage leaders from engaging in activity to promote the efforts of Negro people to secure for themselves what the Constitution, laws, and this court have said is their due. Indeed, this court

has specifically recognized on many occasions that the otherwise valid functioning of the judicial process may be, in a particular instance, no more than a tool to penalize and discourage such activity. *Dombrowski v. Pfister, 380 U.S. 479* (1965); *Cameron v. Johnson*, 33 L.W. 3395, 3397 (1965); (dissenting opinion). And see the per curiam opinion of the Court of Appeals for the Fifth Circuit in *Cox v. Louisiana*, No. 22,657 (June 29, 1965).

By the above noted cases and by its many other opinions, this court has demonstrated a willingness to look carefully at the record of relatively small cases which, if ignored, would set a precedent encouraging the use of state criminal prosecutions to harass and intimidate unpopular persons. As the appendix and the body of the petition amply demonstrate, a leader in the effort to gain Negro equality can never be certain that his most mundane business dealings will not grow into protracted criminal prosecutions.

Therefore, the petitioner urges that this court grant this petition for a Writ of Certiorari to enable him to have at least one hearing on the serious legal issues involved.

CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT AND THE PRESENTATION OF UNDECIDED QUESTIONS OF LAW

I

Petitioner was convicted by the Louisiana District Court of the Unauthorized Use of A Movable under L.R.S. 14:68, *supra*. While it is true that petitioner lacked the *verbal consent* to remain in possession of the car, (T. 147-

149) he was not without legal authority to do so under the applicable Louisiana laws. Indeed, by charging him a monthly rate the company tacitly admitted that his use was authorized. (T. 144-147) Louisiana Civil Code Article 2669 provides:

> *Lease* or *hire* is a sylallagmatic contract, to which consent alone is sufficient, and by which one party gives to the other the enjoyment of a thing, or his labor, at a fixed price.

Article 2670 provides:

> The letting out of things is of two kinds, to wit:
>
> 1. The letting out of houses and movables (which is called a lease for rent).
> 2. .....

Article 2727 provides:

> The lease ceases, of course, at the expiration of the time agreed on.

Article 1817 provides:

> Silence and inaction are also, under some circumstances, the means of showing an assent that creates an obligation; if after the termination of a lease, the lessee continues in possession, and the lessor be inactive and silent, a complete mutual obligation for continuing the lease is created by the act of occupancy of the tenant on the one side, and the inaction and silence of the lessor on the other

Article 2686 provides:

> The parties must abide by the agreement as

> fixed at the time of the lease. If no time for its duration has been agreed on, the party desiring to put an end to it must give notice in writing to the other, at least 10 days before the expiration of the month, which has begun to run.

Thus the laws of Louisiana make it quite clear that the petitioner was in possession and use of the car under a valid claim of right established by law. Civil Code Article 1817, *supra*, works to revive the terms of the lease with the exception that the term is by the month. This is called "tacit reconduction." *Sharpe v. Jenkins*, 150 So. 2d 563 (La. App. 1963); *Nagen v. Foret's Drug Store, Inc.* 162 So. 2d 354 (La. App. 1964). His rightful use and possession of the car could only be terminated by compliance with the terms of the applicable civil statutes. Se Civil Code Article 2686, *supra*. (But *cf.* T. 135-137)

The foregoing provisions of the Civil Code must all be read in conjunction with the criminal statute when construing the latter. The criminal code (L.R.S. 14:3) provides in relevant part:

> . . . all of (the criminal code) provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provisions.

Civil Code Article 17 provides:

> Laws in *pari materia*, or upon the same subject matter, must be construed with reference to each other; what is clear in one statute may be called in aid to explain what is doubtful in another. [Cf. L.R.S. 1:3]

The Louisiana jurisprudence also is quite clear on the point that when the lessee holds over after the expiration of the term of a valid lease, the lease is renewed with the exception that the period is monthly. *Bowles v. Lyon*, 6 Rob. 262 (1843); *Powell v. Smith*, 62 So. 2d 671 (La. App. 1953); *Herring v. Bredlove*, 222 La. 1088, 64 So. 2d 441 (1952); *Board of Levee Comm. of Orleans Levee District v. Magee Aircraft Co., Inc.*, 77 So. 2d 239 (La. App. 1955); *Nagen v. Foret's Drug Store, Inc.*, *supra*; *Sharpe v. Jenkins*, *supra*.

The effort by the state in this case to make criminal the behavior of the petitioner when the same behavior is clearly contemplated as lawful and sanctioned by the terms of the civil law of Louisiana can only be explained as a "planned prosecutorial abuse of a (state criminal) statute." *Cox v. Louisiana*, No. 22, 657 (5th Cir., June 29, 1965), citing *Dombrowski v. Pfister*, 380 U.S. 479 (1965), and *Cameron v. Johnson*, 33 L.W. 3395, 3397 (1965).

II

The provisions of the Louisiana Civil Code as set forth above directly contradict the provisions of the criminal statute as the state seeks to apply it to this case. There are two constitutional objections to this situation: *First*, a person can not possibly be expected to be aware of the kind of conduct made criminal by the provisions of the criminal statute in that the criminal statute does not itself define "consent," and other provisions of Louisiana law permit the behavior here sought to be made criminal. Thus a basic principle of constitutional law is violated. *United States v. Harriss*, 347 U.S. 612, 617 (1954); *Lanzetta v. New Jersey*, 306 U.S. 451 (1939);

Connally v. General Construction, 269 U.S. 385, 391 (1926); *Winters v. New York*, 333 U.S. 507,519 (1948); *Herndon v. Lowry*, 301 U.S. 242, 259 (1937); *Baggett v. Bullett*, 377 U.S. 360, 368, 373 (1964), (as applied here petitioner is being subjected to punishment for a different kind of "guiltless, knowing behavior"); *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961); *United States v. National Dairy Products Corp.*, 372 U.S. 29 (1963); *Screws v. United States*, 325 U.S. 91 (1945).

Secondly, where the terms of the statute are otherwise clear, a court may not, by retroactive judicial construction, make the statute apply to conduct not fairly within the terms of the statute in the absence of judicial construction. *Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964). And see Note, 109 U. of PA.L.REV. 67, 73-74 n. 34 (1960).

Petitioner is well aware that the inquiry here is not the same as that in cases where the claim is that the conduct is constitutionally protected. Nevertheless, the existence of two valid and contradictory state laws gives rise to the question of whether the State of Louisiana may constitutionally permit and at the same time make criminal the same behavior. Petitioners behavior is always protected from arbitrary action by the state.

This is not a case where the faults in the statute or in its application may be saved by the existence of a requirement of specific intent. Cf. *Screws v. United States, supra.* L.R.S. 14:11 provides in relevant part:

> . . . However, in the absence of qualifying provisions, the terms "intent" and "intentional" have

> reference to "general criminal intent." [See L.R.S. 14:10(2) *infra.*]

Louisiana law specifically recognizes that where an accused relied on a valid law as a guide to behavior, such reliance shall constitute a complete defense in a criminal prosecution based on the same behavior. L.R.S. 14:17(1) provides:

> . . .
>
> (1) Where the offender reasonably relied on the act of the legislature in repealing an existing criminal provision, or in otherwise purporting to make the offender's conduct lawful; . . .
>
> . . .

There should be no question but that the relevant civil law provisions certainly purport to make petitioners conduct lawful.

III

This court has held that the element of scienter is the rule rather than the exception to the principles of Anglo-American jurisprudence. *Smith v. California*, 361 U.S. 147, 150 (1959). The court has also recognized that in some cases it is within the power of the state to define a crime absent the element of scienter, e.g. *United States v. Balint*, 258 U.S. 250, 42 S. Ct. 301 (1922). In this case Louisiana has not so attempted, but has defined a crime which requires for its operation "general criminal intent." L.R.S. 14:11 *supra*. L.R.S. 14:10(2) provides:

> General criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the

> ordinary course of human experience, must have adverted to the criminal consequences as reasonably certain to result from his act or failure to act.

Given the provisions of the civil law of Louisiana, the state could not have shown the existence of general criminal intent in the petitioner. Indeed, the only way in which the state could have overcome the existence of the civil law provisions and the terms of the criminal provisions was by proving at trial *specific* criminal intent. As is amply shown by the record, this was not done.

IV

It is an elementary requirement of procedural due process that some evidence be introduced which could support a conviction under a criminal statute. But the petitioner in this case was held responsible under a criminal statute when the "charges against him were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment." *Thompson v. Louisville*, 362 U.S. 199 (1960); *Garner v. Louisiana*, 368 U.S. 157 (1962).

V

Petitioner was "singled out" for the enforcement of this statute due to his historic activities as a leader in the efforts of his community to obtain full and equal enjoyment of the rights of citizenship. The statutory history of L.R.S. 14:68 and the few cases that have dealt with it (Appendix H), demonstrated beyond doubt that the statute was not meant to apply to the facts of this case.

Oyer v. Boyles, 368 U.S. 448 (1962) is inapposite. Petitioner is not claiming that he was singled out for enforcement while other offenders are not prosecuted. Rather, petitioner is claiming "that the selection was deliberately based upon an unjustifiable standard such as race, ..." *Oyer v. Boyles, supra* at 456. Cf. *Snowden v. Hughes*, 321 U.S. 1, 8 (1944); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

IMPORTANCE OF THE FEDERAL QUESTIONS

The assault on the citadel of Negro segregation, fear, and poverty proceeds apace, but resistence to these efforts continues in violation of fundamental law. This court can not overlook such violations merely because they are manifested in sophisticated or clandestine fashion. *Terry v. Adams*, 345 U.S. 461 (1953). Indeed, the use of the criminal process to discourage and harass persons engaged in protests and other activities is perhaps the most serious sort of violation of fundamental law.

This court has shown itself ready to stand against the improper use of criminal sanctions by local government. Where liberty is at stake, the size of the penalty is never at issue.

Further, the approach to the criminal law taken by the lower courts in this case present significant questions of the construction of criminal statutes. The fundamental requirement of notice, broadly stated, is the difference between free society and arbitrary rule.

Man's activities in his daily life must be viewed by the legal process as integral rather than disjointed. Laws

must be construed with a view to all of man's activities in his society, rather than as applicable to a particular phase of his life depending on the nature of the body of rules. This is a rule of construction superior to any technical or particular rules of construction.

Petitioner's research discovered no case in which this court has reached the question of the constitutional sufficiency of construing criminal statutes without regard to other applicable state laws. That question is clearly presented here.

APPENDIX A.

IN THE
UNITED STATES DISTRICT COURT
EASTERN DIVISION OF LOUISIANA
BATON ROUGE DIVISION

CRIMINAL ACTION

No. 1585

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee.

Defendant, Bertrand A. O. Tyson, has been charged in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, with the violation of a state criminal statute pertaining to the unauthorized use of a movable. This charge, preferred by way of bill of information filed by the District Attorney of the Parish of East Baton Rouge, Louisiana, pertains to an alleged violation of the criminal statutes of the State of Louisiana, particularly, Revised Statutes 14:68. Defendant is charged with having used an automobile

belonging to Avis Rent-A-Car, without authority of the owner, and the owner of the vehicle, through its president, Roy B. Bowers, is the complaining witness. When arraigned in the state court, defendant, through counsel, pleaded not guilty. Thereafter, defendant filed a motion to quash and an application for a bill of particulars. The trial court denied the motion to quash, and when the application for the bill of particulars came on for hearing, the District Attorney voluntarily agreed to furnish the defendant all of the information requested. This was done, and the information requested was filed in the record. After the defendant's motion to quash was denied, he filed a petition to remove the case from the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, to this court, ostensibly pursuant to the provisions of Title 28 USC 1443. A motion to remand was then filed by the State of Louisiana, and it is that motion which came on for hearing before this court on May 6, 1965. After hearing arguments of counsel, the court granted the motion to remand, and now assigns the following reasons therefor.

The defendant Tyson is a Negro resident of Plaquemine, Louisiana, who has been active in the civil rights movement in this area. The present criminal charge against him, i.e., unauthorized use of a movable, has nothing whatsoever to do with civil rights. Nevertheless, the defendant contends that he cannot get a fair trial on this charge in the courts of the State of Louisiana. The removal petition filed in his behalf is a hodge-podge of nonsense. For example, defendant, who is merely charged under the state law with the offense of having used an automobile without the consent of its owner and with having refused to return the vehicle after having been

requested to do so, all in violation of the laws of the State of Louisiana, and particularly in violation of R.S. 14:68, now claims in his removal petition that if he is *tried* for this offense in a state court, it will deprive him of the exercise of his right of freedom of speech, of his right to freely assemble, of his right to petition the Government for the redress of grievances, of the privileges and immunities guaranteed by the United States Constitution, of his right to disseminate information concerning the means of registering to vote, and of his right to urge Negroes to register to vote. He further contends that if he is *convicted* of having violated the state law making it a crime to use a movable without the owner's permission, then such a conviction will "punish him for the exercise of rights, privileges and immunities secured him by the Federal Constitution." His apparent contention is that the United States Constitution guarantees him the right to the unauthorized use of a movable.

Defendant then proceeds to enumerate five additional reasons why he cannot get a fair trial in the state court. These reasons include (1) state court judges are elected and the majority of voters in East Baton Rouge Parish are white persons; (2) Negroes are generally systematically excluded from juries; (The present case pending in the state court is not a jury case, nor has the defendant requested trial by jury.) (3) defendants charged with *civil rights* violations in this Parish usually receive maximum sentences; (4) Negro witnesses are usually addressed by their first name in state courts; and (5) the community is hostile to Negroes.

Ordinarily such a "shotgun" attack on the courts of this Parish and State would not warrant serious com-

ment by this court. But since it is now apparent that the new tactic being employed by counsel representing Negro defendants in this area is to attempt to remove to the federal court every criminal case filed in the state courts against a member of the Negro race, some comment and observations on this practice seems warranted.

Title 28 USCA 1443 provides:

> "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
> "(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> "(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

This statute, pursuant to the provisions of which defendant has attempted to remove this case to the federal court, has consistently been interpreted by the courts to provide the right of removal, particularly in civil rights cases, where, because of some provision of the state constitution or laws, a person is prevented from asserting or protecting his constitutionally protected rights in the state court, or is, because of such legal impediment, unable to obtain a fair determination thereof. The mere fact that there may be some local, individual prejudice

against a defendant, does not necessarily give rise to a right of removal. In the instant case, there is no allegation by the defendant that there is any state statute or state constitutional provision which would in any way prevent him from asserting his federally guaranteed rights or from receiving a fair trial in the state court wherein he is charged. Nor could he validly have made such an assertion. The alleged consequences to the defendant of a trial and conviction in the state court are almost too ridiculous to warrant comment. There is simply no connection between those allegations and the crime with which this defendant is charged.

As for the five specific reasons listed why defendant says he cannot get a fair trial in the state court in this case, little need be said. As Judge Kaufman of the United States Court of Appeals for the Second Circuit has said "Judges are not forbidden to know as judges what they see as men." It would be difficult indeed to find a court, state or federal, which has any more diligently performed its duties in an unbiased, impartial manner, regardless of the nature of the case, or the color of the litigant's skin, than have the state courts of this Parish. There is no state law to prevent the defendant from receiving a fair trial in the state courts of this Parish, and there is absolutely no showing, nor could there be, of any failure on the part of the District Attorney of this Parish, or on the part of the State Court Judge to whom this case was assigned, to perform their duties in an honorable, unbiased, fair, and impartial manner. If defendant has any legitimate reason to allege or claim that the trial judge or the district attorney in this case are biased or prejudiced to the extent of being unable to afford him a fair trial, he is amply protected by the

provisions of Louisiana law pertaining to recusation of judges and district attorneys where bias, prejudice, or personal interest are present. The record of the state court proceedings thus far in this matter clearly shows that every right of this defendant has been zealously protected and preserved by the trial judge. The only complaint defendant really has is that the trial judge refused to grant his motion to quash, and thus dismiss the suit against him. If the trial judge was wrong in this regard, the defendant is amply protected by the appellate procedures available to him. This court is of the opinion that there is only one real objective in filing this removal petition and the many similar ones recently filed in this court. That objective is the complete frustration of the courts in their administration of the criminal laws of the State of Louisiana, particularly in cases where the defendants are members of the Negro race. This objective was clearly identified when the court asked defense counsel, in open court, if it were not true that his real objective was to have all Negroes charged with crime, regardless of the nature of the crime, tried in federal courts and thus relieve the state courts completely of all jurisdiction over such cases, and he replied "that is pretty close to it."

This "Rage to Remove," TIME Magazine, October 30, 1964, p. 88, is simply one more step in the carefully prepared plan of those who would finally eliminate the last vestige of state sovereignty. This latest tactic obviously goes far beyond any sincere effort to protect civil rights. It is designed to completely deprive the various states of the administration of their criminal laws. The next step will obviously be an attempt to include in the area prohibited to the states the administration of their civil

laws. If that could be accomplished, the transition would be complete.

This Court simply cannot, under the guise of protecting civil right, aid and abet such an obvious attempt to use the United States Constitution itself as an instrument by which the same Constitution may ultimately be completely destroyed. The protection of federally guaranteed civil rights is one thing; the virtual scrapping of the United States Constitution is quite another. The constitutionally guaranteed rights of all persons, regardless of their race, creed or color, must be diligently preserved and protected, and this court will use every *legitimate* means at its disposal to do so. But such protection by the courts must just as zealously be confined to that provided for and allowed within the framework of the Supreme Law of the Land, the United States Constitution. Little indeed would be accomplished by using improper means to protect civil rights today, only to destroy tomorrow the very form of government which provides those rights.

Giving lip service to the Constitution is not enough. Its provisions must be regarded as gospel. The exigency of the moment affords no justification for placing strained and unnatural interpretations on otherwise clear and unambiguous language. Under the Constitution, the Congress of the United States has the power to determine the jurisdiction of the federal courts. This jurisdiction has been clearly defined and set forth by various acts of Congress. Title 28 USC 1443 provides for the removal, under certain circumstances, of certain specific types of actions from the state court to the federal court. This court is bound by those provisions. It has no right

to ignore them nor to enlarge upon their scope in the name of civil rights. All powers not delegated specifically by the Constitution to the United States are, by the very terms of the Constitution itself, reserved to the states or to the people. This provision is clear and unambiguous. The right of the federal courts to initially hear matters pertaining to alleged violations of state criminal statutes is not one of those rights granted to the federal courts either by the United States Constitution or by any act of Congress, unless, pursuant to the provision of Section 1443, it is shown that the state court defendant is, by reason of some state law, deprived of his right to enforce his federally protected rights in the course of his trial in the state court. Until such a showing is made, there is, of course, no right of removal to the federal court. *People of the State of New York v. Milton A. Galamison, et al, 342 F. 2d 255 (CA2-January 26, 1965).*

The courts of the State of Louisiana have an absolute, constitutional right to try persons for violation of state criminal statutes. They also have an absolute, constitutional duty to see that all defendants tried before them are fully protected in all of their constitutionally guaranteed rights. As long as the state courts perform that duty and afford all people, regardless of race, creed, or color, a fair and impartial trial, the federal courts cannot deprive them of that right. This court cannot assume that a defendant will be unfairly treated in the state court. Indeed, it must assume the contrary. Until the defendant can show some state law or constitutional provision which would deprive him of the fair trial to which he is entitled in the state court, this court simply

has no jurisdiction over such a case. If, in fact, his rights are not preserved and protected by the state court, the defendant then has access to the federal courts for a review of the state court proceedings. He does *not* have the right to be initially tried in the federal court.

There being no showing whatsoever that the defendant was entitled to remove this matter from the state court to this court, the motion to remand filed by the state was granted.

At the time the motion to remand was granted, the defendant asked that this court issue a stay order staying further prosecution in the state court until such time as this matter could be reviewed on appeal. At the time, there having been no objection made by the state to the stay order, the stay order was granted. However, the court is now of the opinion that the issuance of the stay order was in error. If stay orders in all of these criminal cases which have been removed, and are being removed to this court are granted, the result, i.e., complete frustration of the state court in its administration of its criminal laws, would be almost as completely accomplished as would be the case if this court allowed the removal petitions to stand. While the Court is fully cognizant of the fact that the Civil Rights Act of 1964 amended Title 28 USC 1447(d) to provide that when an action is removed to the federal court under Section 1443, an order remanding the case to the state court from which it was removed is reviewable by appeal. But the fact that it is so reviewable does not mean that in all instances an order staying further proceedings in the state court until the appeal is completed is required. In a case such as this, where the removal is clearly not justified under the

provisions of Section 1443, no such stay order should be granted, and accordingly, the court has issued an order recalling and rescinding the stay order previously issued herein.

Baton Rouge, Louisiana, May 10, 1965.

E. GORDON WEST
UNITED STATES DISTRICT JUDGE

APPENDIX B.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Criminal Nos. 1585

DR. BERTRAND A. O. TYSON

versus

STATE OF LOUISIANA

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

ORDER

CONSIDERING the foregoing motion for stay pending appeal, IT IS ORDERED that the prosecution of Dr. Bertrand A. O. Tyson by the State of Louisiana in this cause be stayed, pending appellate review, or until further orders of this Court.

New Orleans, Louisiana, May ..... 1965.

Judge, UNITED STATES COURT OF APPEAL, FOR THE FIFTH CIRCUIT

VERIFICATION

I, Murphy W. Bell, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the Bar of Louisiana and of the U. S. District Court for the Eastern District of Louisiana.

That I am the duly authorized attorney for petitioner herein, authorized to prepare and verify the annexed petition;

That I have read the annexed petition and know the contents thereof;

That I know of my personal knowledge that all facts stated therein are true except such as are stated on information and belief;

That as to subject matter I believe the petition to be true; and

That I sign this verification on behalf of the petitioner because the annexed petition deals chiefly with matters of law and legal inference to be drawn from facts alleged and/or of which I as an attorney have more knowledge than the petitioner.

MURPHY W. BELL

Sworn to and subscribed to before me
this 30th day of March, 1965.

NOTARY PUBLIC

APPENDIX C.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH DISTRICT

No. 22571

DR. BERTRAND A. O. TYSON,

Appellant,

versus

STATE OF LOUISIANA,

Appelle.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(May 21, 1965)

Before TUTTLE, Chief Judge, EDGERTON* and SMITH**, Circuit Judges.

ORDER ON MOTION TO VACATE STAY OF ORDER OF REMAND

PER CURIAM:

This is a motion by the State of Louisiana to vacate an order staying an order of remand returning this case

---

*Senior Circuit Judge of the D. C. Circuit, sitting by designation.
**Of the Third Circuit, sitting by designation.

from the United States District Court for the Eastern District of Louisiana to the State Court, entered by a Judge of this Court on the 12th day of May, 1965. On the papers and showing now presented, it has not been made to appear that there is a reasonable likelihood that this Court, on the merits, will find the District Court's order in error, especially in light of the nature of the allegations which form the basis of removal jurisdiction under Section 1443(1), 28 U.S.C.A.

The motion to vacate the stay order is, therefore, GRANTED, and the stay heretofore granted is, therefore, VACATED.

APPENDIX D.

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Criminal No. 1585

DR. BERTRAND A. O. TYSON

Petitioner.

versus

STATE OF LOUISIANA

Respondent.

PETITION FOR REMOVAL OF CRIMINAL ACTION FROM 19TH JUDICIAL DISTRICT COURT, STATE OF LOUISIANA TO THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE, LOUISIANA

I.

1. Petitioner is Dr. Bertrand A. O. Tyson, a physician, a Negro citizen of Iberville Parish, State of Louisiana and of the United States. He holds memberships in the National Association for the Advancement of Colored People, Congress of Racial Equality, and The Afro-American Worker's Defense League, associations of persons engaged in seeking,

by lawful and peaceful means, the equal civil rights of Negroes and all persons in the State of Louisiana and in the United States.

2. On or about November 20, 1964, petitioner went to the Lakeshore Parliament House, a hotel located in Baton Rouge near the State Capitol Building. Petitioner then proceeded through the lobby to inquire of, and rent an automobile, from Avis-Rent-a-Car Company, which maintains offices at said Hotel.

3. Petitioner contracted to lease for an indefinite period, a 1964 Chevrolet Impala, Louisiana license number 381196 and a printed lease form to that effect was duly signed, dated and executed by the parties. Petitioner paid a $50.00 deposit as consideration for the lease agreement and was given the immediate possession of the car.

4. On or about January 15, 1965, the manager telephoned the Petitioner, who lives in Plaquemine, Louisiana, and demanded immediate possession of the leased property. There was some heated discussion, with racial overtones, whereupon petitioner broke off the conversation and hung up the phone.

5. Petitioner was arrested the next day on a warrant from the East Baton Rouge District Attorney's office and subsequently released after posting bail. A criminal bill of Information was later filed against petitioner charging him with violating "on or about January 15, 1965" Louisiana Revised Statute 14:68 (unauthorized use of a movable). Petitioner applied for a Bill of Particulars and moved to quash the

Information. Argument was had and memoranda of law were filed. The State District Court ruled that petitioner must stand trial. Petitioner now seeks to remove.

II.

6. The acts for which petitioner is being held to answer for the offense as charged, are, insofar as the offense charged have any basis in fact, acts in the constitutionally protected exercise of petitioner's right of freedom of speech, assembly, and petition guaranteed by U.S. Constitiutional Amendments I, XIV and 42 U.S.C. Sec. 1983 (1958), which acts are also in the exercise of petitioner's privileges and immunities as a citizen of the United States guaranteed by U.S. Constitutional Amendments. XIV, XV, and 42 U.S.C. Sec. 1985 (1958), and 42 U.S.C., Sec. 1971 (1958) to disseminate information concerning the means of registration for voting in federal elections, and information concerning the federal rights of Negroes to vote in all elections without abridgement by reasons of race, and to urge Negroes having the qualifications of voters to register for voting in all such elections. Petitioner further contends that the Civil Right Act of 1964 protected his right to enter into the Lakeshore Parliament House Hotel to contract therein and enjoy the full and equal services of its facilities, privileges, advantages and accommodations without discrimination, intimidation, threats, coercion, or attempts to punish. Insofar as the crime charged against petitioner is based on allegations of conduct not protected by the federal Constitution and laws cited, those allegations are

groundless in fact. Conviction of petitioner on the charge against him, has, and will punish him for the exercise of rights, privileges and immunities secured him by the federal Constitution and laws, and has, and will deter him and others similarly situated from the future exercise of these rights, privileges and immunities, for if Louisiana Statute 14:68 under which he is prosecuted makes petitioner's conduct criminal, then R.S. 14:68 is unconstitutional as applied, whereas if the statutes are construed so as to save their constitutionality under the federal Constitution, there is no evidence upon which petitioner may be convicted, consistent with the due process of law required by the Fourteenth Amendment.

7. The arrest and prosecution of petitioner, Dr. Bertrand A. O. Tyson, has been and is being carried on with the sole purpose and effect of harassing petitioner and of punishing him for, and deterring him from exercising his constitutionally protected rights of free speech and assembly to protest the conditions of racial discrimination which the State of Louisiana now maintains by statute, ordinance, regulation, custom, usage, force and practice, and to urge Negroes, the victims of this discrimination, to register for voting in federal and state elections, free of racial discrimination. The harassment of petitioner is pursuant to a policy of racial discrimination which is now encouraged, followed and enforced by legislation, and by action of the executive and Judicial branches, of the State of Louisiana.

III.

8. By reason of the foregoing, petitioner is being pros-

ecuted for acts done under color of authority derived from the federal Constitution and laws providing for equal rights, that is, United States Const. Amends. I, XIV, XV; 42 U.S.C., sec. 1971, 1983, 1985 (1958) and Civil Rights Act of 1964, and for refusing to do acts on the ground that they would be inconsistent with the Constitution and laws cited. Also by reason of the allegations of paragraphs 1 to 7 above and more particularly of paragraph 9 below. Petitioner has been denied, is being denied, and cannot enforce in the Courts of the State of Louisiana rights under the cited federal Constitutional and statutory sections providing for the equal rights of citizens of the United States and of all persons within the jurisdiction of the United States.

IV.

9. Petitioner is unable to enforce his federal rights in the state courts of Louisiana and particularly in the 19th Judicial District Court, because those courts are hostile to petitioner by reason of race and his civil rights' activity and by reason of the commitment of those courts to enforce Louisiana's policy of racial discrimination. In the District Court for East Baton Rouge Parish where petitioner will be tried:

   (a) District Court Judges are elected for terms of four years at elections at which Negroes have been systematically denied the right to vote by reason of race in violation of the Fifteenth Amendment.

   (b) Negroes are systematically excluded from the juries by reason of race.

(c) Criminal defendants charged with offenses arising out of demonstrations and other exercise of their equal civil rights have usually been held to answer under excessive and exorbitant bail and if convicted maximum imposition of sentence is imposed.

(d) Negro defendants, Negro witnesses and Negro attorneys are addressed by their first names, as a mark of contempt and racial discrimination in violation of the Equal Protection Clause.

(e) The Court sits in a community which is hostile to and inflamed against Negroes and, in particular, hostile to and inflamed against persons like petitioner who actively exercise his federal Constitutional rights by working in a lawful and peaceful manner to achieve the equal rights of Negroes and of all persons within the State of Louisiana and the United States.

V.

10. Petitioner attaches hereto and makes a part hereof, the same as if written in extenso, the following documents filed in the State proceedings:

1. Certified copy of Bill of Information
2. Certified copy of Application for Particulars
3. Certified copy of Motion to Quash
4. Answer to Application for Particulars (certified)
5. Memoranda in support of Motion to Quash (certified)

6. Memoranda opposing Motion to Quash (certified)

7. Certified copy of Extract of minutes in *State v. Tyson* No. 52,627 Criminal

WHEREFORE, petitioner prays that this criminal proceeding be removed from the 19th Judicial District Court for East Baton Rouge, Louisiana, for trial pursuant to 28 U.S.C. sec. 1446 (1958) since the proceedings removed are criminal, no bonds or filing fees are required with this petition.

(b) That the Court grant petitioner such other relief from time to time as to it may appear just and reasonable for the protection of petitioner's rights herein.

By Attorney:

.....

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

VERIFICATION

I, Murphy W. Bell, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the bar of Louisiana and of the U. S. District Court for the Eastern District of Louisiana.

That I am the duly authorized attorney for petitioner herein, authorized to prepare and verify the annexed petition;

That I have read the annexed petition and know the contents thereof;

That I know of my personal knowledge that all facts stated therein are true except such as are stated on information and belief;

That as to subject matter I believe the petition to be true; and

That I sign this verification on behalf of the petitioner, because the annexed petition deals chiefly with matters of law and legal inference to be drawn from facts alleged and/or of which I as an attorney have more knowledge than the petitioner.

MURPHY W. BELL

Sworn to and subscribed to before me
this 30th day of March, 1965.

NOTARY PUBLIC

APPENDIX E.

IN THE

UNITED STATES COURT OF APPPEALS

FOR THE FIFTH CIRCUIT

No. 22571

DR. BERTRAND A. O. TYSON

versus

STATE OF LOUISIANA

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

DR. BERTRAND A. O. TYSON, upon his oath d
poses:

That he is the Dr. Bertrand A. O. Tyson charged
Bill of Information No. 52,627 in the 19th Judicial Di
trict for East Baton Rouge Parish, Louisiana; that
removed said prosecution to the District Court for t
Eastern District of Louisiana, Baton Rouge Divisi

because he is denied and cannot enforce in the State Courts of Louisiana, his federal rights, including those guaranteeing equal protection of the laws and due process of law.

Affiant deposes that he is denied and cannot enforce his federal rights in the Louisiana Courts because:

1) He is a Negro, who received wide spread local and national publicity as a leader of the Plaquemine, Louisiana protests against discrimination during 1963 and 1964.

2) He has continued to assert his leadership in the Negroes' effort to abolish restrictive voting and obtain equal rights of all citizens.

3) Mr. Sargent Pitcher, Jr., the present District Attorney of the 19th Judicial District of Louisiana was elected to his present position by running on a strong segregationist platform, citing his previous efforts at temporarily puting the NAACP out of business in Louisiana (see *NAACP v. Gremillion* (37 _____ U.S. _____) ; he boasts of being one of the founders and charter members of THE WHITE CITIZENS COUNCIL, INC. of Louisiana.

4) That during the demonstrations by Southern University students in 1961, he caused hundreds of persons to be arrested on various assorted charges, and placed under heavy bail usually ranging from $1500.00 to $3000.00 for such misdemeanors as obstructing the sidewalks, disturbing the peace, etc; That only 2 or 3 were ever brought to trial. Others were tried, but never sentenced.

5) That the Judges of the 19th Judicial District

who ran for office against opposition publicly declared that they would discharge their responsibility to the electorate by maintaining "our way of life," i.e. Segregation of the races; that all of the elected executive, judicial and other officials of the 19th Judicial District have pledged to maintain segregation or other wise discriminate against Negroes.

6) That affiant is not guilty of the offense charged, i.e., unauthorized use of a movable, he having truly leased an automobile from the rental car agency which rental was evidenced by a written lease; that the car was returned in good repair a few days after the contract term had expired (but Louisiana Revised Civil Code makes legal a "holding over after expiration of lease"), and all charges paid to the company and an acquittance granted therefor.

7) That although affiant is a resident of Plaquemine, Iberville Parish, he also practices medicine in the 19th Judicial District area which comprises Baton Rouge, his place of birth.

8) Affiant truly and firmly believe that the State Courts and State Officials, being hostile and unfair to Negroes in general, and more so to Negro Leaders who agitate for equal rights, that he will not be able to enforce his federal rights in the 19th Judicial District Court, or in any Louisiana State Court and that he should be tried in the federal system of Courts as provided by federal law.

9) Affiant further deposes that because of his work and efforts in civil rights activities

that his income has diminished and that he is heavily in debt; that he cannot afford to litigate in both the State and Federal Courts at the same time.

Baton Rouge, Louisiana May 17, 1965.

Signed:_____
Dr. Bertrand A. O. Tyson

Sworn to and subscribed before me, this _____ day of May, 1965.

_____
MURPHY W. BELL
Notary Public
East Baton Rouge
State of Louisiana

CERTIFICATE

I certify that a copy of the foregoing affidavit has been served upon Mr. Sargent Pitcher, Jr. by mailing a copy thereof to his address Court House, Baton Rouge, Louisiana.

Baton Rouge, La. May _____ 1965.

_____
Murphy W. Bell

APPENDIX F.

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

Criminal No. 1585

DR. BERTRAND A. O. TYSON,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

APPLICATION FOR PRODUCTION OF RECORDS DIRECTED TO SARGENT PITCHER, JR., DISTRICT ATTORNEY

ON MOTION of Murphy W. Bell, attorney for Dr. Bertrand A. O. Tyson, petitioner herein and upon informing the Court that petitioner has alleged herein that the "arrest and prosecution of petitioner, Dr. Bertrand A. O. Tyson has been and is being carried on with the sole purpose and effect of harrassing petitioner and of punishing him for, and deterring him from exercising his constitutionally protected rights of free speech and assembly to protest the conditions of racial discrimina-

tion which the State of Louisiana now maintains by statute, ordinance, regulation custom, usage, force and practice," (see article 7), that SARGENT PITCHER, JR. Esq., District Attorney of the Parish of East Baton Rouge, has in his possession complete records of all of the arrests, prosecutions and dispositions of cases ensuing from protests against racial discriminations originating in East Baton Rouge Parish, particularly since November, 1961 and being more particular the following cases:

1. State of Louisiana Vs. Weldon Rougeau
2. State of Louisiana Vs. Charles McDew
3. State of Louisiana Vs. Robert Zellner
4. State of Louisiana Vs. Patricia Tate
5. State of Louisiana Vs. Ronnie M. Moore
6. State of Louisiana Vs. Arthur L. Jelks
7. State of Louisiana Vs. Joan Trumpower

That the production of these records and the status of the arrests and disposition of the cases, particularly, those enumerated above, is necessary to show a pattern of intimidation and arbitrary arrest and prosecution without any real intention of obtaining a valid conviction by the State of Louisiana in regard to persons protesting State-imposed racial discrimination.

That further in connection with said records the presence of SARGENT PITCHER, JR., District Attorney is necessary in order to explain and interpret said records and the present status of said cases.

WHEREFORE, considering the foregoing, IT IS ORDERED that SARGENT PITCHER, JR., DISTRICT ATTORNEY OF EAST BATON ROUGE bring and produce all of the above-mentioned records in open Court on the 6th day of May, 1965 at 9:00 A.M., or to any other date which this cause may be continued.

Baton Rouge, Louisiana, May ....., 1965.

U. S. DISTRICT JUDGE

Submitted By:

Murphy W. Bell Atty. for
Dr. Bertrand A. O. Tyson

APPENDIX G.

IN THE

UNITED STATES COURT OF APPPEALS

FOR THE FIFTH CIRCUIT

Criminal Nos. 1585

DR. BERTRAND A. O. TYSON

versus

STATE OF LOUISIANA

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION FOR STAY PENDING APPEAL

(1) On March 30, 1965 a Removal Petition was filed on behalf of Dr. Bertrand A. O. Tyson appellant herein seeking to remove his criminal prosecution which was presently pending in the 19th Judicial Court of East Baton Rouge Parish, Louisiana.

Dr. Tyson is a Negro citizen of Iberville and a leader of the NAACP and CORE and other Negro "uplift" Organizations.

The jurisdiction of the District Court was invoked

under 28 U.S.C. Sec. 1443 (1), (2) (1958). An oral motion was made at the conclusion of argument on the motion to remand for as stay pending appeal to this Honorable Court.

(2) On May 10th 1965 the District Attorney of the 19th Judicial District Court filed in the District Court his *MOTION IN OPPOSITION TO THIS HONORABLE COURT'S VERBAL ORDER OF APPEAL WITH STAY ORDER* all as will appear from a copy of the attached motion and by reference to the record. The District Judge summarily and ex parte recalled and vacated the stay that was issued May 6, 1965.

(3) Unless the remand order is stayed forthwith petitioner-appellant will suffer irreparable injury. The pending information against petitioner, Dr. Bertrand A. O. Tyson, will probably be set for trial before effective review of the District Court Judgment can be had. Prosecution in the state courts serves no legitimate state concern if the removal is proper. It does (A) take petitioners-appellants to trial in a forum where Congress has directed they not be tried, a forum where by their allegations they cannot effectively enforce their federal constitutional and statutory rights, (B) subject them to the restraints of the state criminal process during the very period when their right to federal removal is being tested, (C) potentially moot the question of the propriety of the removal, and (D thus punish them for exercising, and inhibit the exercise in the future of their First and Fourteenth Amendment freedoms.

(4) Stays pending appeal of remand orders in similar cases have recently been issued in *Baines v. Danville,*

321 F. 2d 643 (4th Cir. 1963), and *Rachel v. Georgia*, 5th Cir., No. 21,354 (unreported order 3/12/64). In *Georgia v. Tuttle*, 32 U. S. L. week 3446, decided June 22, 1964, the Supreme Court sustained the Court of Appeals of the Fift Circuit in the *Rachel* case, by denying the petition of the State of Georgia for writs of mandamus and prohibition to vacate the stay. The Civil Rights Act of 1964 specifically amended 28 U.S.C. 1447 (d) to allow the right of appeal in cases of this type. Disallowance of a stay of state criminal processes will defeat the Congressional will.

WHEREFORE, petitioner-appellant respectfully prays:

(A) that the remand order of the District Court be forthwith stayed pending review of that order by this Court;

(B) that the Court grant petitioner-appellant such other relief from time to time as to it may appear just and proper.

May 11, 1965

By Attorney:

Murphy W. Bell
971 South 13th St.
Baton Rouge, La.
348-3572

APPENDIX H.

HISTORY OF L.R.S. 14:68

Acts of 1892, No. 30:

> Section 1. . . . That whoever shall unlawfully and maliciously take and ride, drive or otherwise work any horse, mule, ox or oxen, the property of another, without the consent of the owner shall be guilty of a misdemeanor and upon conviction shall be fined . . .

Acts of 1914, No. 168

> . . .
>
> Section 1. . . . That it shall be unlawful and a misdemeanor for any person, whether an employee of the owner of the automobile or not, to take from any garage, public or private, or from the street where said automobile is standing, any automobile belonging to another and use same without the consent of the owner of said automobile.
>
> . . .

Acts of 1934, No. 209

> . . .
>
> Section 1. . . . That whoever shall milk a cow, the property of another, without the consent of the owner, shall be guilty of a misdemeanor . . . .

Acts of 1938, No. 286, section 12, sub. i.

> Any person who shall drive a vehicle, not his own, without the consent of the owner thereof, and with intent temporarily to deprive said own-

> er of his possession of such vehicle, without intent to steal the same, shall be guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owners consent on a previous occasion to the taking or driving of such vehicle by the same or a different person; . . . .

Acts of 1942, No. 43, section 1, Article 68:

> Unauthorized use of movables is the intentional taking or use of any movable which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices or representations, but without any intention to deprive the other of the movable permanently. The fact that the movable so taken or used may be classified as an immovable according to the law pertaining to civil matters, is immaterial.
>
> . . .

The only cases construing or otherwise dealing with 14:68 as it presently reads, (Acts Of 1942) are: *State v. Clayton*, 236 La. 1093, 110 So. 2d 111 (1959); *State v. Kelley*, 241 La. 224, 128 So. 2d 18 (1961).

APPENDIX I.

IN THE
SUPREME COURT OF LOUISIANA

No. 47,842

STATE OF LOUISIANA

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON

Appellee.

In re: Dr. Bertrand Oliver Austin Tyson applying for writs of certiorari, mandamus and prohibition.

Writ refused. We find no error of law in the rulings complained of.

/s/ WBH
/s/ JBF
/s/ JBH
/s/ FWH
/s/ EHMcC
/s/ JWS
/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
June 28, 1965

Deputy Clerk

RECORD IN COURT BELOW

INDEX

PERRY M. JOHNSON
Clerk of the
19th Judicial District Court
Parish of East Baton Rouge
P. O. Box 1548
Baton Rouge, La. 70821

June 11, 1965

Hon. V. J. Courville
Clerk, Supreme Court of Louisiana
New Orleans, La.
Dear Sir:

I hereby transmit two duplicate copies of the Minutes of Court, Bill of Information, Motion to Quash, Application For Bill of Particulars, Answer to Application For Bill of Particulars, Motion For New Trial, together with exhibits and two copies of the transcript of the testimony in the suit entitled "State of Louisiana vs Dr. Bertrand Oliver Austin Tyson", No. 52,627 on the Criminal Docket of the Nineteenth Judicial District Court, the Court having granted counsel for the accused up to and including midnight of June 25, 1965 to apply to the Supreme Court of Louisiana for writs in this matter.

/s/ Juanita M. McNeil
Dy. Clerk of Court

STATEMENT OF JURISDICTION

This Honorable Supreme Court has jurisdiction of this matter by virtue of Article VII, Section 2, of the Louisiana Constitution (1921) wherein it is provided:

> "The Supreme Court, the Court of Appeal, and each of the Judges thereof, subject to review by the Court of which he is a member, and each District Judge throughout the State including Judges of the Civil and Criminal District Courts in the Parish of Orleans, may issue Writs of Habeas Corpus, in behalf of any person in actual custody in cases within their respective jurisdictions; and may also, in aid of their respective jurisdictions, original, appellate, or supervisory issue Writs of Mandamus, Certiorari, Prohibition, quo warranto, and all other needful writs, orders and process, and where any of said writs are refused, the appellate courts shall indicate the reasons thereafter".

The Criminal District Court for the Parish of East Baton Rouge, Louisiana, the 19th Judicial District, in matter number 52,627 sentenced defendant to pay a fine of $100.00 and costs or 60 days in the Parish jail, and to serve four months in the Parish jail consecutive to the 60 day sentence, in case the fine was not paid.

STATEMENT OF FACTS

On November 20, 1964, Dr. Bertrand A. O. Tyson, a Negro Physician residing and practicing medicine in Plaquemine, Iberville Parish, Louisiana went to the Parliament House Hotel in Baton Rouge, Louisiana, where Avis Rent-A-Car Company maintained its offices and rented a 1964 Chevrolet Impala pursuant to a printed

lease agreement furnished by the lesser and signed and executed by the lessee and the lessor's agent. Lessee, Dr. Tyson, made a $50.00 cash deposit as consideration for the lease contract.

After nearly two months of use, during which he had obtained from the lessor, Rent-A-Car Co., several extensions of the lease agreement, lessor, through its President, a Mr. Bowers, demanded via of long distance telephone, that Dr. Tyson return the automobile immediately or that he will be criminally prosecuted. According to Mr. Bowers statement Dr. Tyson replied: "Why don't you do that." (tr. 116). On January 18, 1965 Mr. Bowers signed a warrant accusing Dr. Tyson with "Unauthorized Use of a Movable" commencing with the time that he signed the warrant. On January 21, 1965 Dr. Tyson appeared at the Avis Rent-A-Car Co. offices, checked the car in, turned in his credits and paid the balance with a check, which he (Dr. Tyson) later gave cash for.

A dispute subsequently arose between the Rental Company and Tyson as regarded the credits allowed in settlement of the account. This matter is still pending and is the subject of a civil discussion between Tyson's attorney and a Mr. Simmons, attorney for Mr. Bowers. Meanwhile, Dr. Tyson was subsequently tried and convicted on the charge "that he intentionally used a 1964 Chevrolet Impala, Louisiana License No. 381196, the property of Avis Rent-A-Car, without its consent, but without the intent to permanently deprive the owner thereof." Contrary to the form of the Statutes of the State of Louisiana (R.S. 14:68).

IN THE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIMINAL SECTION

No. 52,627

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee.

BILL OF EXCEPTION NUMBER ONE

BE IT REMEMBERED, that on the trial of the Motion to Quash the Bill of Information as amended by the State Answer to the Application for Bill of Particulars, the Court overruled the said Motion to Quash, whereupon defense counsel excepted to the Court's ruling; defendant incorporates hereto by reference, the said Motion to Quash, Application for Bill of Particulars, answer to Bill of Particulars and ruling of the Court.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of the Court, and which is done accordingly this ____ day of _____, 1965.

_____

JUDGE

Submitted By:

_____

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

IN THE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIMINAL SECTION
No. 52.627

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee,

BILL OF EXCEPTION NUMBER TWO

BE IT REMEMBERED, that on the trial of this cause and after judgment was rendered, defendant moved for a new trial, which motion incorporated by reference the transcript of the testimony which was unfinished at the time counsel for accused moved the Court for additional time to allow completion of the transcript before argument and judgment on said Motion for new trial; the Court overruled said motion for extension of time to allow the transcript to be included in the motion for a new trial whereupon defense counsel excepted to the Court's ruling and included the entire transcript in his formal bill reserved, to-gether with the oral request and the Court's ruling.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, and which is done accordingly this ____ day of _____, 1965.

_____

JUDGE

Submitted By:
Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

IN THE
NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CRIMINAL SECTION

No. 52,627

STATE OF LOUISIANA,
Appellant,

versus

DR. BERTRAND A. O. TYSON,
Appellee,

BILL OF EXCEPTION NUMBER THREE

BE IT REMEMBERED, that on the trial of this cause and after judgment was rendered defendant moved for a new trial, alleging there was no evidence to support the Judgment of the Court, incorporating in the said motion for new trial, by reference, the transcript of the trial testimony. The Court overruled the said motion, whereupon Counsel for accused excepted to the ruling of the Court and reserved a formal bill which he disignated the motion, transcript, and ruling to be a part thereof, and which motion transcript and ruling are incorporated within this Bill of Exception, by reference.

Defendant first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of the Court, and which is done accordingly this ____ day of _____, 1965.

_____

JUDGE

Submitted By:

_____

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

ASSIGNMENT OF ERRORS

1. The unauthorized use of a Movable Statute, R.S. 14:68, is unconstitutional in its application as construed here, to proscribe "holding over" after lawful lease.

2. It is a denial of due process and equal protection of the laws as guaranteed and made applicable to the States to disallow counsel for accused, proper and sufficient time to properly prepare and confect documents essential to prosecution of an appeal or application for writs.

3. The overruling of the Motion for a New Trial, which had by its confection incorporated the trial transcript, which motion was predicated on the fact that there was *no* evidence to support the judgment of "Guilty", constituted a denial of due proc-

ess and equal protection of the laws as made applicable to the States by reason of the Fourteenth Amendment to the Constitution of the United States.

BRIEF IN SUPPORT OF ASSIGNMENT OF ERROR NO. 1 AND NO. 3

THE UNAUTHORIZED USE OF A MOVABLE STATUTE (R.S. 14:68) UNDER WHICH RELATOR WAS CONVICTED IS, AS APPLIED TO HIM, SO VAGUE AND UNCERTAIN AS TO VIOLATE DUE PROCESS.

A. DUE PROCESS REQUIRES THAT A STATE STATUTE GIVE FAIR NOTICE OF WHAT CONDUCT IS CRIMINAL.

The United States Supreme Court has repeatedly held that a state statute violates the due process clause of the Fourteenth Amendment if it fails (1) to give fair notice of what acts it encompasses, and (2) to provide the trier with a sufficiently definite standard of guilt to avoid conviction on an ad hoc basis; e. g., *Lanzetta v. New Jersey*, 306 U.S. 451; *Connally v. General Construction Co.*, 269 U.S. 385; *Musser v. Utah*, 333 U.S. 95; *Winters v. New York*, 333 U.S. 507, 519. As the United States Supreme Court said in Connally, 269 U.S. at 391:

> ". . . A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the First essential of due process of law."

Similarly, in *Lanzetta*, the Court defined the fair notice required by due process at 306 U.S. 453:

> ". . . No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids . . ."

Mr. Justice Harlan in his concurring opinion in *Garner v. Louisiana*, 82 S. Ct. 248, at page 274, said:

> "While Cantwell was not explicitly founded on that premise, it seems to me implict in the opinion that a statute which leaves the courts in uncertainty as to whether it was intended to reach otherwise constitutionally protected conduct must by the same token be deemed inadequate warning to a defendant that his conduct has been condemned by the state . . ."

Where the jurisprudence of our own state the statute herein is unconstitutionally vague. Witness what was said in *State v. Christine*, 239 La. 259, 118 So. (2d) 403, 413, a 1960 case:

> "A cardinal rule basic in our law provides that one cannot be held accountable, or subject to criminal prosecution, for any act of commission unless and until that act has first been denounced as a crime in a statute that defines the act sought to be denounced with such precision the person sought to be held accountable will know his counduct fails within the purview of the act intended to be prohibited by, and will be subject to the punishment fixed in, the statute.

"And the courts have not only consistently refused to usurp the prerogatives of the legislature by supplying either the definition or essential elements thereof that have been omitted in the drafting of the statute, but, under rules calling for construction of all criminal and penal statutes as stricti juris, resolved ambiguities in favor of accused.

"* * *

"The dividing line between what is lawful and unlawful cannot be left to conjecture * * *. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that a citizens may act upon another.

"* * * A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. "269 U. S. at page 391, 46 S. Ct. at page 127, 70 L. Ed. at page 328.

"And, as stated in a familiar quotation from the reports of the United States Supreme Court, "Every man should be able to know with certainty when he is committing a crime. * * * It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large."

"*United States v. Reese*, 92 U. S. 214, 23 L. Ed. 563, 565 and 566."

This Court has repeatedly recognized that under our

state Constitution fair notice is an element of due process. See, e.g., *State v. Christine*, 239 La. 259, 118 So. (2d) 403 (1969); *State v. Sanford*, 203 La. 961; *State v. Kraft*, 214 La. 351, 37 So. (2d) 815 (1948). In *State v. Kraft, Supra*, the Court explained the requirement of certainty as follows, 214 La. at 356:

> ". . . it is sufficient to say that criminal statute, in order to be valid and enforceable, must define the offense so specifically or accurately that any reader having ordinary intelligence will know when or whether his conduct is on the one side or the other side of the border line between that which is and that which is not denounced as an offense against the law."

Thus, relator was not given fair notice that his conduct was criminal either by the terms of the statute or by its interpretation in the Louisiana District Court.

IN THE

SUPREME COURT OF LOUISIANA

No. _____

STATE OF LOUISIANA,

Respondent,

DR. BERTRAND OLIVER AUSTIN TYSON,

Relator.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS, AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA THE HONORABLE FRED S. LEBLANC, JUDGE, PRESIDING.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF LOUISIANA:

The petition of the State of Louisiana on the relation of DR. BERTRAND OLIVER AUSTIN TYSON, the defendant and relator herein, applying for Writs of Certiorari, Mandamus and Prohibition, and invoking the general supervisory jurisdiction of the Honorable Supreme Court of Louisiana over the Honorable, the Nine-

teenth Judicial District Court of the Parish of East Baton Rouge, Louisiana, respectfully represents:

1.

That the jurisdiction of the Honorable Supreme Court of Louisiana is invoked under Article Seven, Section Ten of the Constitution of the State of Louisiana and in accordance with Rule XII of the Rules of the Supreme Court of the State of Louisiana.

2.

That this is an unappealable case, a misdemeanor, in which the fine imposed upon the defendant was less than Three Hundred and No/100 ($300.00) Dollars, and the imprisonment imposed was not more than six months in jail.

3.

That the defendant and applicant herein was charged in Bill of Information number 52,627 on the docket of the 19th Judicial District Court, Criminal Section with violation of L.S.A.-R.S. 14:68, Unauthorized use of a Movable. A certified copy of the Bill of Information is annexed hereto and made a part hereof.

4.

That defendant filed a Motion to Quash the said information, whereupon the District Judge deferred argument and ruling on the Motion to Quash until defense counsel applied for Particulars, which particulars was furnished by the State and formed the basis for the later amended Bill of Information. The District Judge subsequently overruled the Motion to Quash, defense counsel timely reserved a Formal Bill of Exception to

the ruling. A certified copy of the Application for Bill of Particulars, answer to the Application for Bill of Particulars, Motion to Quash are attached hereto and made a part hereof.

5.

That this case was tried on June 2, 1965, before the Honorable Fred S. LeBlanc, Judge, whereupon at the close of the testimony, the accused was found guilty as charged. To this ruling defendant timely excepted and reserved a formal bill.

6.

On June 4, 1965, counsel for the accused field a Motion for a New Trial, which was argued and submitted to the Court. Counsel for the accused requested the Court to withhold its ruling on this motion until the transcript of testimony taken on trial of the case on the merits was completed. The Assistant District Attorney objected whereupon the Court denied the request of the Counsel for the Accused. Defense Counsel excepted and reserved a Formal Bill asking that the Motion for a New Trial as filed, the uncompleted transcript of testimony and the objection of the State all be made a part thereof, which items are attached hereto and made part of this application for writs.

(a) The Court, for oral reasons assigned, overruled the Motion For a New Trial. To which ruling Defense Counsel excepted, reserved a Formal Bill in which he designated the motion as filed, the uncompleted transcript of testimony, the objection of the State and ruling of the Court to be included therein.

7.

On June 4, 1965, the accused was sentenced by the Court to pay a fine of $100.00 and costs of Court, or in default of payment thereof to be confined in the Parish jail for 60 days; and in addition thereto, to be confined in the Parish jail for four months; the four months sentence to run consecutive to the alternative sentence. Counsel for accused excepted to the judgment to the Court making the entire record including all Bills of Exception part of a Formal Bill.

8.

That on June 11, 1965, Defense Counsel perfected and tendered to the District Attorney copies of three Bill of Exceptions in this cause, and thereafter in open Court filed the originals of the said Bills of Exception with the Trial Judge. On the 16th day of June, 1965, Defense Counsel filed a *Motion For Extension of Time to Apply for Writs of Review* whereupon the District Judge extended the time for applying for writs until June 25, 1965 at midnight. Defense Counsel had, not at the time of this latest filing, nor upon filing these papers with this Court, been informed that the Judge had acted on the Formal Bills of Exception. Therefore relator, in order to protect whatever rights he may have in this application, requests that the Honorable Supreme Court of Louisiana instruct the Court below to sign and Seal the Bills of Exception tendered, in order that a full and proper review of the errors complained of may be had in this cause. Copies of all filed and pertinent documents in the premises are attached hereto and made a part hereof, the same as if written in extenso.

9.

That the trial court erred in overruling the Motion to Quash, the oral Motion for Extension of Time to allow the transcript to be completed and the Motion for a New Trial, relator alleges that:

1. The unauthorized use of a Movable Statute, R.S. 14:68, is unconstitutional in its application as construed here, to proscribe "holding over" after lawful lease.

2. It is a denial of due process and equal protection of the laws as guaranteed and made applicable to the States to disallow counsel for accused, proper and sufficient time to properly prepare and confect documents essential to prosecution of an appeal or application for writs.

3. The overruling of the Motion for a New Trial, which had by its confection incorporated the trial transcript, which motion was predicated on the fact that there was *no* evidence to support the judgment of "Guilty", constituted a denial of due process and equal protection of the laws as made applicable to the States by reason of the Fourteenth Amendment to the Constitution of the United States.

10.

That the defendant has exhausted all of his remedies to the Court of original jurisdiction, and no appeal lies from the verdict and sentence imposed hense relief is requested of this Court;

WHEREFORE, relator prays that this application for

Writs of Mandamus, Certiorari and Prohibition be granted, and for all orders necessary and for general and equitable relief.

Of Counsel:

Jack Greenberg, Esq.
James Nabrit, III
10 Columbus Circle
New York, New York

By Attorney:

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

MURPHY W. BELL

who, after being duly sworn did depose and say:

That he is the attorney for Dr. Bertrand Oliver Austin Tyson, defendant and relator in the above and foregoing application for writs; that he prepared the same; that all of the allegations therein contained are true and cor-

rect to the best of his knowledge, information and belief; that notice of defendant's intention to apply to the Supreme Court of Louisiana for Writs of Certiorari, Mandamus and Prohibition was given in open Court on June 4, 1965 and that copies of the herein Application for Writs of Certiorari, Mandamus and Prohibition has this day been served upon the Honorable Fred S. LeBlanc, presiding Judge of the 19th Judicial District Court and upon the Honorable Sargent Pitcher, Jr., District Attorney for the 19th Judicial District, all prior to filing these documents with the Clerk of the Honorable Supreme Court of Louisiana in New Orleans, Louisiana.

MURPHY W. BELL

Sworn to and subscribed before me this 24th day of June, 1965.

MILDRED BYRD
Notary Public

MINUTES OF COURT

WEDNESDAY, FEBRUARY 3, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

The accused, charged with unauthorized use of a movable, through counsel waived formal arraignment on said charge and pleaded not guilty. Assigned for April 1, 1965. Counsel for the accused reserved the right to withdraw the plea herein entered for the purpose of filing motions, and the court granted counsel until February 12, 1965, in which to file any motions he may see fit to file.

WEDNESDAY, FEBRUARY 10, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

This matter came before the Court on a motion to quash previously filed herein. Counsel for the accused made a

motion to introduce testimony on article 1 of his motion. Counsel for the State objected to the introduction of testimony and the Court sustained the objection. Counsel for the accused objected to the ruling of the Court and reserved a formal bill of exception making the argument of counsel and ruling of the Court a part of the formal bill of exception. Counsel for the accused then requested that argument on the remainder of the motion be passed and requested additional time to file motions. Whereupon, the Court granted counsel for the accused ten days from this date in which to file any motions he may deem fit and proper and ordered that argument on the remainder of the motion to quash be passed.

FRIDAY, FEBRUARY 12, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

Application for bill of particulars filed on behalf of the accused. Assigned for hearing on February 23, 1965, at 9:30 A.M.

TUESDAY, FEBRUARY 23, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627
CRIMINAL SECTION

This matter came before the court on an application for bill of particulars previously filed herein. The Assistant District Attorney stated to the court that he would supply counsel for the accused the information sought in the application for bil of particulars. The motion to quash previously filed herein was submitted to the court, and by the court taken under advisement.

MONDAY, MARCH 1, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627
CRIMINAL SECTION

Answer to application for bill of particulars filed on behalf of the State.

WEDNESDAY, MARCH 17, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,
Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,
Appellee.

No. 52,627
CRIMINAL SECTION

The court, for oral reasons assigned, overruled the motion to quash previously filed herein, to which ruling of the court counsel for the accused excepted and asked that a bill of exception be reserved, making the motion to quash, the application for a bill of particulars, the memoranda filed by both the state and the accused, a part of the bill of exception, together with the ruling of the court.

THURSDAY, APRIL 1, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

Passed.

TUESDAY, MAY 25, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

On motion of the Assistant District Attorney, this case was reassigned for trial on June 2, 1965, at 2:00 P.M., the accused, Murphy W. Bell, and the surety to be notified.

WEDNESDAY, JUNE 2, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

On motion of the District Attorney, the bill of information herein was amended by striking "Twentieth (20th)" and adding in lieu thereof "or about the Eighteenth (18th)"; by deleting "November" and adding in lieu thereof "January;" by deleting "November" and adding in lieu thereof "January;" by deleting "Sixty-four (1964)" and adding in lieu thereof "Sixty-five (1965);" by deleting the words "unlawfully took and" and adding in lieu thereof the word "intentionally," and by adding between the words "Avis Rent-A-Car" and the word "but" the words "without its consent."

Counsel for the accused objected to going to trial on the amended bill of information, which objection was overruled by the court, to which ruling of the court counsel for the accused objected and reserved a bill of exception, asking that the amended bill of information and the ruling of the court be made a part of the bill of exception.

The accused, through counsel, waived formal arraignment on the amended bill of information and pleaded not guilty.

This case came on for trial in accordance with previous assignment, the accused, charged with unauthorized use of a movable, being present in court represented by counsel. Evidence was introduced and the case submitted to the court. Whereupon, the court found the accused guilty as charged, to which ruling and judgment of the court counsel for the accused reserved a formal bill of exception.

Sentence deferred until Friday, June 4, 1965, and the accused was ordered released on his present bond pending sentence.

FRIDAY, JUNE 4, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

Counsel for the accused filed a motion for new trial in this matter. The motion was argued and submitted to the Court. Counsel for the accused requested the Court to

withhold its ruling on this motion until the transcript of testimony taken on the trial of the case on the merits was completed. The Assistant District Attorney objected to this procedure. The Court denied the request of the counsel for the accused. To which ruling of the Court counsel for the accused objected and reserved a formal bill of exception asking that the motion for a new trial as filed, the uncompleted transcript of testimony and the objection of the Assistant District Attorney all be made part of the bill of exception.

The Court, for oral reasons assigned, overruled the motion for new trial. To which ruling of the Court counsel for the accused objected and reserved a formal bill of exception asking that the motion as filed, the uncompleted transcript of testimony, the objection of the Assistant District Attorney and the ruling of the Court be made a part of the formal bill of exception.

The accused, having previously been tried and found guilty of unauthorized use of a movable, was present in court represented by counsel, and was brought before the bar for sentence. Whereupon, the Court sentenced the accused to pay a fine of $100.00 and costs of court, or in default thereof to be confined in the Parish jail for 60 days; and in addition thereto to be confined in the Parish jail for four months; the four months sentence to run consecutive to the alternative sentence. To which sentence counsel for the accused objected and reserved a formal bill of exception making the entire record including all bills of exception part of the formal bill of exception.

Counsel for the accused filed a written notice of his intention to apply to the Supreme Court of Louisiana for

writs of certiorari, mandamus and prohibition. The Court granted a stay of execcution of the sentence imposed herein and granted counsel for the accused up to and including midnight of June 18, 1965, to apply to the Supreme Court of Louisiana for writs in this matter.

FRIDAY, JUNE 11, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

Counsel for the accused submitted to the Court bills of exception Nos. 1, 2 and 3 for appropriate action by the Court, and counsel for the accused informed the Court that he had furnished the District Attorney with copies of the bills of exception the originals of which have been tended to the Court.

WEDNESDAY, JUNE 16, 1965

Nineteenth Judicial District Court, Criminal Section, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

No. 52,627

CRIMINAL SECTION

Counsel for the accused filed herein motion for extension of time to apply for writs of review, and the Court ordered that the deaedline for the filing of applications of writs in this cause be extended from June 18, 1965, at midnight to June 25, 1965, at midnight. Counsel for the accused asked that the record show that a copy of said motion was served on the District Attorney's office.

A TRUE EXTRACT OF THE MINUTES OF COURT THIS JUNE 22ND, 1965.

Juanita M. McNeil
Dy. Clerk of Court

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CRIMINAL SECTION
No. 52,627

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,

Appellee.

MOTION FOR EXTENSION OF TIME TO APPLY FOR WRITS OF REVIEW

NOW COMES Dr. Bertrand A. O. Tyson, defendant herein, through undersigned counsel who now informs the Court that he needs additional time to properly prepare the application for writs of certiorari, mandamus and prohibition herein previously noticed,

WHEREFORE, premises considered IT IS ORDERED that the deadline for the filing of applications of writs in this cause be extended from June 18, 1965, at midnight to June 25, 1965, at midnight.

Baton Rouge, Louisiana, June 16, 1965.

---

s/ FRED S. LEBLANC
DISTRICT JUDGE

AFFIDAVIT

Murphy W. Bell, upon his oath deposes that the foregoing motion is filed in good faith.

MURPHY W. BELL
971 South 13th Street
Baton Rouge, La.

MILDRED BYRD
Notary Public

Sworn to subscribed before me this 16th day of June, 1965.

Filed June 16, 1965

(Signed) Kathleen O. Funk
Dy. Clerk of Court

A True Copy June 23, 1965

Kathleen O. Funk
Dy. Clerk of Court

NO. 72,627
CM

State of Louisiana — Parish of East Baton Rouge

NINETEENTH JUDICIAL DISTRICT COURT

RALPH L. ROY Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

DR. BERTRAND OLIVER AUSTIN TYSON

late of the Parish of East Baton Rouge, on or about the Eighteenth (18th) ~~Twentieth (20th)~~ day of ~~November,~~ January Five (1965) ~~Four (1964)~~ in the year of our Lord One Thousand Nine Hundred and Sixty- with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, did violate R.S. 14:68 in that he ~~unlawfully took and~~ intentionally used a 1964 Chevrolet Impala, Louisiana License No. 381196, the property of Avis Rent-A-Car, ~~but~~ without (without its consent) the intent to permanently deprive the owner thereof,

contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

James Williams
1407 Nata ST.
Plaquemine, La.

M. Lee

WITNESSES:

1. Roy B. Bowers, President
Avis Rent-A-Car, 1575 N. 3rd St.
Baton Rouge, Louisiana

2. Rex Pendleton
1575 N. 3rd St.
Baton Rouge, Louisiana

No. 52.627

NINETEENTH
JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

DR. BERTRAND OLIVER AUSTIN TYSON(CM)
1519 Meriam St.
Plaquemine, Louisiana

INFORMATION
UNAUTHORIZED USE OF MOVABLE

Filed Feb. 3 A. D., 1965
Peter Ray
Deputy Clerk, Nineteenth Judicial District Court

Assistant District Attorney

2/3/65. 25a + OR 9
See 4/1
for 10 a / no. 1-2

2/9/65. 1- - 2 no. 00
or a 7, 8 2/10

2/10/65 Passed
ct. granted add. 10 days
To file motions

2/18/65. Ord - a v a w m
6 or 2/23 @ 9:20 a.m.

2/23/65. Ada 9 / or
or 6 ert - a v a w.
1- / 2 - 6 or 6 or

3/17/65. 1- - 2 ag 23.
or a e w -

4/1/65 Passed
5/25/65-Reas. 6/2/65 2 P.M.
-5 surety

6/2/65. m; no. -
6/14; 2 1m 6 -

A TRUE COPY
June 8, 1965
DY. CLERK OF COURT

82-B

IN THE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIMINAL SECTION
No. 52,627

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee.

MOTION TO QUASH

NOW COMES DEFENDANT, through undersigned counsel, reserving all rights to file other necessary pleadings herein and moves to quash the Bill of Information and criminal prosecution thereon for this, to-wit:

1. Defendant alleges herein that he lawfully took possession of and used a 1964 Chevrolet Impala, Louisiana license number, 38 I 196, the property of Avis Rent-a-car company pursuant to a contract entered into and executed between the said company and defendant on November 20, 1964. A copy of the said contract, together with receipt marked paid is attached hereto and

incorporated herewith, said exhibit being marked D-1 and D-2 respectively for identification.

a) That under the terms of the agreement between defendant and the Avis Rent-a-car company, a per diem and mileage were assessed against the renter (accused) as a condition for authorized usage.

b) That defendant at no time informed or violated the contract herein, but merely sought to execute it in its fullest sense, i.e., exercising his right of usage without harassment from the company.

c) Defendant alleges that the initiation of criminal process by defendant Avis Rent-a-car is nothing more than an unlawful and illegal attempt to use State criminal process to resolve an alleged civil dispute, if any, indeed existed. THEREFORE, if the facts as shown by defendant's allegations 1a, 1b, and 1c are true as shown by proof to be adduced herein, then defendant pray that the Bill of Information filed hereto be quashed and the prosecution dismissed, or in the alternative if the facts as shown by defendant's allegations 1a, 1b, and 1c are taken to be true and the State of Louisiana still contend that defendant violated R.S. 14:68, mover then alleges alternatively:

2.

That R.S. 14:68 is void for vagueness, being offensive to the 6th and 14th Amendment of the United States Constitution.

3.

That further R.S. 14:68 is defective constitutionally because (at least under the facts of this case) it purports to delegate powers inherently legislative to private citizens; such unlawful delegation of unlimited discretion over public conduct without ascertainable standards, limits or scope will deprive mover of rights guaranteed by the 1st, 5th, 6th and 14th Amendments to the Federal Constitution.

WHEREFORE MOVER PRAYS that this Motion to Quash be granted and that the said Bill of Information be declared null and void and the prosecution thereunder be dismissed.

By Attorney:
MURPHY W. BELL

AFFIDAVIT

MURPHY W. BELL upon his oath, deposed, that he is the attorney for Dr. Bertrand A. O. Tyson, that he prepared the foregoing motion and all allegations are true, upon information and belief.

SWORN TO AND SUBSCRIBED BEFORE ME, this 9th day of February, 1965.

CELIA A. KING
Ex-Officio Notary Public

Filed February 9, 1965

s/ Betty Ray
Dy. Clerk of Court

A TRUE COPY
June 8, 1965

P. M. Johnson, Jr.
Dy. Clerk of Court

No. 4228103

(1) VEHICLE NUMBER: 962

(2) MAKE: Chev (3) TYPE: 4DR IMPALA

(4) COLOR (CARS) OR PAYLOAD (TRUCKS): SILVER (5) OWNER CITY: BATON ROUGE

(6) LICENSE PLATE NUMBER: 38 I 196 (7) STATE: LA

(8) VEHICLE WILL BE USED IN STATES OF: La & Texas

(9) VEHICLE WILL BE RETURNED NOT LATER THAN: 12-24-64

(10) DEPOSIT: 50.00

(11) LOCAL CONTACT: called and he will pick

(12) DRIVER'S LICENSE NUMBER: 203175 12-25-64

(13) STATE: LA (14) EXPIRATION DATE: 66

(15) ADDITIONAL AUTHORIZED DRIVER

(16) ADDITIONAL DRIVER'S LICENSE NUMBER

(17) STATE (18) EXPIRATION DATE

(19) ADDITIONAL INFORMATION

(20) VEHICLE WILL BE RETURNED TO: KK

(21) SUBJECT TO AN ADDITIONAL FEE, VEHICLE MAY BE RETURNED TO ALTERNATE CITY LISTED BELOW, IF AUTHORIZED BY AGENT OF LESSOR

CITY AUTH. BY

(22) OPTIONAL EQUIPMENT RENTAL

(23) SPECIAL RENTAL RATE ADJUSTMENT (SEE PARAGRAPH 4 PAGE 1) ACCEPTS DECLINES RENTER'S INITIALS

SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE PAGE 1

(24) SIGNATURE OF RENTER: X [signature]

(25) SIGNATURE OF ADDITIONAL RENTER: X

(26) PLACE LOCAL RENTAL STATION IMPRINT HERE

17 04 L LICENSEE

PARKWAY HOUSE MOTOR HTL
[illegible] ST.
BATON ROUGE LOUISIANA

(27) CREDIT CARD NUMBER, RENTER, HOME ADDRESS, FIRM NAME, FIRM ADDRESS
INDICATE CORRECT BILLING ADDRESS IN BLOCK 33

BERTRAND OLIVER
AUSTON TYSON
1519 MERIAM ST.
PLAQUEMINE, LA
Phone 687-3076
Res. [illegible] 1.44 54

(28) TYPE OF CREDIT CARD USED, OTHER QUALIFICATION: 1964 Mid. Surgery Card 5388

(29) EXPIRATION DATE

(30) DATE AND TIME IN

(31) DATE AND TIME OUT

(32) TIME USED

(33) MI. IN		1	1	3	8	5	(38) MI. @ .10	443	60
(34) MI. OUT		7	4	4	9				
(35) TOT. MI.		4	4	3	6				

(36) BILLING ADDRESS: CASH ☐ FIRM ☐ HOME ☐ AVIS CENTRAL ☐ OTHER CENTRAL ☐

(39) HRS. @ 1.50

(40) DAYS @ 10.00

(41) WKS @ 30.00

(42) MI - 175.00 350 00

(43) BUS. ☐ RESV. ☐

(44) SUB-TOTAL 793 60

(45)

(34) REFERRED BY

(46) TOTAL TIME AND MILEAGE CHARGES 793 60

INTERCITY FEE $ RENTER'S INITIALS

8 DAYS @ $1.00 8 WKS @ $5.00 40 00

CUSTOMER CREDITS

(47) GAS, ETC. 227 67

(48) DEPOSIT 50 00

(49) TOTAL CREDITS 277 67

(50) TOTAL TAXABLE CHARGES 833 60

(51) TAX 2 % 25 00

(52) DAMAGES

(53) TOTAL CHARGES 858 60

(54) LESS CREDITS 277 67

(55) NET AMOUNT DUE 583 93

(56) RECEIVED REFUND (TO BE INITIALED BY RENTER) X

(57) OUT BY K (58) IN BY Ra (59) CHECK-IN STATION BR

ALL CORRESPONDENCE AND REMITTANCES MUST SHOW THIS RENTAL AGREEMENT NUMBER → No. 4228103

DUPLICATE PAGE 2 OPR 14 (REV. 1960) AVIS RENT-A-CAR SYSTEM STANDARD RENTAL AGREEMENT

MONEY RECEIPT

Parkwood House
P. O. Box 1920
Baton Rouge

1-25 1965

Received from Dr Tyson

Five Hundred Eighty Three 93/100 Dollars

$ 583 93

M. Bowers

IN THE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIMINAL SECTION
No. 52,627

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee.

APPLICATION FOR BILL OF PARTICULARS

NOW COMES DEFENDANT, through undersigned counsel and informs the Court that he is unable to plead or properly prepare his defenses unless a bill of particulars to the Information filed herein is answered by the State of Louisiana as follows:

1. Does the State contend that the accused "unlawfully took" and used a 1964 Chevrolet Impala La. Lic. No. 38 I 196 on November 20, 1964?

2. If not, when does the State contend that the unlawful taking and using began?

3. Does the State contend that the owner's consent for the *original* taking and using was not obtained?

4. Does the State contend that the "taking and using" of the movable herein was by means of fraudulent conduct, practices or representations?

5. If so, what specific acts constituted the fraudulent conduct, practices or representations?

6. Does the State contend that there was no valid contract of lease between the accused and the owner of the instant vehicle?

7. If the State admits that a contract of lease was validly executed between the accused and the owner, at which point in time and by what method was it rendered invalid?

WHEREFORE, Defendant Dr. Bertrand A. O. Tyson Prays that the District Attorney be ordered to show cause on a day and time certain why the Application for Bill of Particulars should not be answered fully and in writing or alternatively why the Bill of Information should not be quashed for failure to do so.

For all equitable relief.

By Attorney:

MURPHY W. BELL
971 South 13th St.
Baton Rouge, Louisiana

ORDER

Considering the foregoing: IT IS ORDERED that the District Attorney for East Baton Rouge Parish show cause on the 23rd day of February 1965 at 9:30 o'clock A.M. why the Application for Bill of Particular should not be answered fully, and in writing or alternatively why the Bill of Information should not be quashed for failure to do so.

Baton Rouge, Louisiana February 12th, 1965.

FRED S. LEBLANC
JUDGE

AFFIDAVIT

MURPHY W. BELL upon his oath deposes that he is the attorney for the accused herein; that he prepared the foregoing application and that all allegations are true.

MURPHY W. BELL

SWORN TO AND SUBSCRIBED before me this 12th day of February, 1965.

KATHLEEN O. FUNK
Notary Public

P. M. Johnson, Jr.

Dy. Clerk of Court

A TRUE COPY
June 8, 1965

Filed Feb. 12, 1965

s/ Betty Ray
Dy. Clerk

IN THE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIMINAL DIVISION

No. 52,627

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee.

ANSWER TO APPLICATION FOR BILL OF PARTICULARS

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana, and for answer herein says:

1.

No. The State contends that the accused unlawfully and without the authority of the owner of the said automobile herein identified used same on or about January 15, 1965, and the State will amend its Bill of Information to comply with the answer herein.

2.

The State contends that the unlawful using began on or about January 15, 1965.

3.

The State does not so contend.

4.

No.

5.

Not applicable.

6.

Yes.

7.

The State admits that originally there was a contract of lease which was rendered invalid on or about January 15, 1965.

WHEREFORE, the State of Louisiana prays that this answer herein be deemed good and sufficient.

By attorney,

RALPH L. ROY
Asst. District Attorney

RALPH L. ROY

CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing Answer to Application for Bill of Particulars has this day been mailed to Mr. Murphy W. Bell, 971 South 13th Street, Baton Rouge, Louisiana, postage prepaid, as attorney for record for the accused.

Baton Rouge, Louisiana, this 1st day of March, 1965.
Filed March 1, 1965

---

s/ Betty Ray
Dy. Clerk

A TRUE COPY
June 8, 1965

P. M. Johnson, Jr.
Dy. Clerk of Court

IN THE

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIMINAL SECTION

No. 52,627

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee.

MOTION FOR NEW TRIAL

NOW COMES, DR. BERTRAND A. O. TYSON through undersigned counsel and moves the Court to set aside the judgment rendered in this cause, and grant a new trial for the following reason:

a) There is no evidence to support the judgment, all as shown by reference to the transcript of the testimony taken down at the trial; said transcript at-

tached hereto and made a part hereof the same as written in extenso.

By Attorney:

MURPHY W. BELL
971 South 13th St.
Baton Rouge, La.

AFFIDAVIT

Murphy W. Bell, upon his oath deposes that he, as attorney for the accused, Dr. Bertrand A. O. Tyson, prepared the foregoing motion which allegations are true and correct.

MURPHY W. BELL

A TRUE COPY
June 10, 1965

Juanita M. McNeil
Dy. Clerk of Court

Sworn to and subscribed before me this 4th day of June, 1965.

M. Aubrey McCleary, Jr.
Notary Public

Filed June 4, 1965
s/ Kathleen O. Funk
Dy. Clerk of Court

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee.

No. 52,627
CRIMINAL SECTION

NOTICE OF INTENTION TO APPLY FOR WRITS

NOTICE is hereby given by the defendant, Dr. Bertrand A. O. Tyson, that he intends to apply to the Honorable, THE SUPREME COURT OF LOUISIANA for writs of certiorari, mandamus and prohibition in this cause.

By Attorney:
MURPHY W. BELL
971 So. 13th Street
Baton Rouge, La.

Filed June 4, 1965
Kathleen O. Funk

Dy. Clerk of Court
A TRUE COPY
June 10, 1965
Juanita W. McNeil
Dy Clerk of Court

No. 4228103

(1) VEHICLE NUMBER: 962
(2) MAKE: Chev
(3) TYPE: 4DR IMPALA
(4) COLOR (CARS) OR PAYLOAD (TRUCKS): SILVER
(5) OWNER CITY: BATON ROUGE
(6) LICENSE PLATE NUMBER: 38I196
(7) STATE: LA
(8) VEHICLE WILL BE USED IN STATES OF: La & Texas
(9) VEHICLE WILL BE RETURNED NOT LATER THAN: 4-23-12-24-64
(10) DEPOSIT: 50.00
(11) LOCAL CONTACT: called and he will be in
(12) DRIVER'S LICENSE NUMBER: 203175 12-25-64
(13) STATE: LA
(14) EXPIRATION DATE: 66
(16) ADDITIONAL AUTHORIZED DRIVER
(16) ADDITIONAL DRIVER'S LICENSE NUMBER
(17) STATE
(18) EXPIRATION DATE
(19) ADDITIONAL INFORMATION
(20) VEHICLE WILL BE RETURNED TO: BR
(21) SUBJECT TO AN ADDITIONAL FEE, VEHICLE MAY BE RETURNED TO ALTERNATE CITY LISTED BELOW, IF AUTHORIZED BY AGENT OF LESSOR
CITY _____ AUTH. BY _____
(22) OPTIONAL EQUIPMENT RENTAL

(27) CREDIT CARD NUMBER, RENTER, HOME ADDRESS, FIRM NAME, FIRM ADDRESS — INDICATE CORRECT BILLING ADDRESS IN BLOCK 33
BERT TRAND OLIVER
AUSTON TYSON
1519 MERIAM ST
PLAQUEMINE, LA
Phone 687-3076
Rom 7118 7.44 54
(28) TYPE OF CREDIT CARD USED, OTHER QUALIFICATION: 55 456 40 1968
1964 Med. Surgery Card 5388
(29) EXPIRATION DATE
(30) DATE AND TIME IN
(31) MI. IN: 11385
(34) DATE AND TIME OUT
(32) MI. OUT: 74499
(37) TIME USED: 2 Hrs 0.
(33) TOT. MI.: 4436
(38) MI. @ .10 . 443 60
(39) HRS. @ 1.50
(40) DAYS @ 10.00
(41) WKS. @ 30.00
(42) M2-175.00 350 00
(43) BLK. RESV.
(44) SUB-TOTAL 793 60
(45)
(46) TOTAL TIME AND MILEAGE CHARGES 793 60
BILLING ADDRESS: CASH / FIRM / HOME / AVIS CENTRAL / OTHER CENTRAL
(34) REFERRED BY
INTERCITY FEE $ _____ RENTER'S INITIALS _____
(23) SPECIAL RENTAL RATE ADJUSTMENT (SEE PARAGRAPH 4 PAGE 1) — RECEIPT — DECLINES
DAYS @ $1.00 8 WKS @ $5.00 40 00
CUSTOMER CREDITS
(47) GAS, ETC. 227 67
(48) DEPOSIT 50 00
(49) TOTAL CREDITS 277 67
(50) TOTAL TAXABLE CHARGES 833 60
(51) TAX 3% 25 00
(52) DAMAGES
(53) TOTAL CHARGES 858 60
(54) LESS CREDITS 277 67
(55) NET AMOUNT DUE 583 93
(56) RECEIVED REFUND (TO BE INITIALED BY RENTER) X
(57) OUT BY RD
(58) IN BY ra
(59) CHECK-IN STATION BR
RENTER'S INITIALS
SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE PAGE 1
(24) SIGNATURE OF RENTER X Bert Trand Oliver
(25) SIGNATURE OF ADDITIONAL RENTER X
(26) PLACE LOCAL RENTAL STATION IMPRINT HERE
17 04 L LICENSEE
[illegible] HOUSE MOTOR HTL
[illegible] ST.
TON ROUGE LOUISIANA

ALL CORRESPONDENCE AND REMITTANCES MUST SHOW THIS RENTAL AGREEMENT NUMBER → No. 4228103

DUPLICATE PAGE 2 — OPR 16 (REV. 1968) — AVIS RENT-a-CAR SYSTEM — STANDARD RENTAL AGREEMENT

MONEY RECEIPT

[illegible] House
P. O. Box [illegible]

1-25 1965

Received from Dr Tyson

Five Hundred Eighty Three 93/100 Dollars

$ 583 93

M. Bowers

96 A

FILED IN EVIDENCE

EXHIBIT State - Y

DATE 6/21/65

Betty Lay

DEPUTY CLERK

STANDARD RENTAL AGREEMENT PAGE 1

Lessor hereby leases to Renter (which includes any "Additional Renter" signing this agreement) the "said vehicle" described on Page 2 hereof upon the terms and conditions herein.

1. The parties agree that Renter is not and does not hereby become an agent, servant or employee of Lessor in any manner whatsoever.

2. VEHICLE SHALL BE RETURNED TO LESSOR OR LESSOR'S AGENT ONLY AT AN AVIS STATION IN CITY FROM WHICH RENTED OR TO LESSOR OR AVIS REPRESENTATIVE AT AN AVIS STATION IN THE DESIGNATED ALTERNATE CITY (page 2) on the return date stated herein, or sooner, upon demand of Lessor. Renter acknowledges said vehicle is the rightful property of Lessor, although registered title may be in a third party and that he received the same in good and safe mechanical condition. Renter agrees he will return said vehicle in the same condition as received, ordinary wear and tear excepted. Lessor has made no warranties or undertakings, express or implied, except as stated herein.

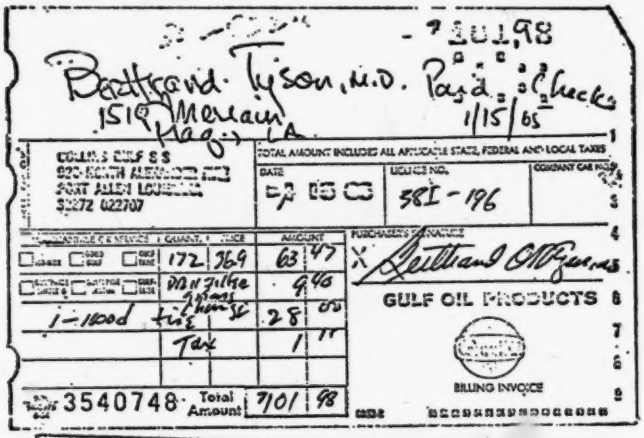
3. RENTER AGREES THAT SAID VEHICLE SHALL NOT BE OPERATED: (a) to carry passengers or property for a consideration, express or implied, nor to carry passengers other than within the interior of said vehicle if a car, or cab if a truck, nor in numbers in excess of the respective seating capacity thereof; (b) by any person in violation of any law governing the operation, return or use thereof; (c) in any race or speed test or contest; (d) to propel or tow (except where said vehicle is a tractor) any trailer or vehicle used as a trailer; (e) by any person other than (1) the Renter or additional Renter who signed this agreement; and (2) any employee or employer of the Renter or member of the renter's immediate family who is 21 years of age or older and a duly qualified licensed driver; (f) by any person with respect to whom Lessor has been furnished with false or untrue information (g) by any person under the influence of intoxicants or narcotics; (h) for any illegal purpose; (i) in any instance where the speedometer of said vehicle has been tampered with or disconnected; (j) other than upon a paved road or public highway or graded private road or driveway; (k) outside of the States or if said vehicle is a truck outside the city and communities abutting thereon, designated on Page 2; or (l) in violation of any of the terms and conditions hereof.

4. Renter expressly acknowledges personal liability to pay Lessor on demand: (a) a mileage charge computed at the rate specified for the mileage covered by said vehicle during the term of this rental; (b) time, and special rental rate adjustment charges at the rates specified for this rental; (c) the additional fee for intercity service, if any, specified on Page 2 hereof, or, if said vehicle is left elsewhere without Lessor's written consent to pay a fee equal to $0.15 per mile from the renting city to the city where left with a minimum charge of $15.00; (d) State and local taxes, if any, payable on items (a), (b), and (c); (e) a sum equal to the fair market value of all tires, tubes and accessories missing from said vehicle; (f) all fines and court costs for parking, traffic or other legal violations assessed against said vehicle, Renter, or Lessor during term of this agreement, except where caused through fault of Lessor; (g) Lessor's costs including attorney's fees, where permitted by law, incurred collecting payments due from Renter hereunder; (h) Lessor's cost to repair all damages to said vehicle provided, however, if said vehicle is operated in accordance with all the terms hereof, Renter's liability for such damage (1) shall not exceed $100 or (2) shall be waived if Renter has purchased in advance the special rental rate adjustment as evidenced by his initials in the space provided on Page 2 hereof.

5. Renter participates as an insured in the benefits of automobile bodily injury and property damage liability insurance and is bound by and agrees to the terms, conditions, limitations, and restrictions thereof even though all of them are not outlined herein. Such insurance has limits of coverage equal to or in excess of statutory requirements for bodily injury and property damage liability insurance; Renter further expressly agrees to indemnify the Company or its insurer for any damages or liability to third parties arising from loading or unloading of said vehicle; it does not cover liability imposed upon or assumed by an insured under any Workman's Compensation Act, plan or law or any contract of any nature; and it requires that every accident must be immediately reported in writing to the Avis station from which the vehicle is rented and in any event within twenty-four hours after the accident. The Renter or Driver must immediately deliver to the Avis station from which the vehicle is rented or to Lessor's insurer as soon as practicable, every process, pleading or notice of any kind relating to any and all claims, suits and proceedings received by the Renter or Driver. The Renter and Driver shall not in any manner aid or abet any claimant, but shall cooperate fully with Lessor's insurer in all matters connected with the investigation and defense of any claim or suit.

6. SPECIAL RENTAL RATE ADJUSTMENT — For the special per diem rental rate adjustment agreed upon herein Lessor agrees that Renter's liability to Lessor for damages shall be governed by the provision of paragraph 4 (h) (2) above.

7. RENT IT HERE LEAVE IT THERE PLAN . For the additional fee specified on Page 2, the Renter may return vehicle to Lessor or Avis representative at an Avis station in alternate city specified on Page 2 provided this authorization is initialed by agent of Lessor.



Beatrand Tyson, M.D. Paid Check
1519 Meraux 1/15/65
Chalmette, LA

COLLINS GULF S S
920 NORTH ALEXANDER AVE
PORT ALLEN LOUISIANA
70767 022707

TOTAL AMOUNT INCLUDES ALL APPLICABLE STATE, FEDERAL AND LOCAL TAXES

DATE 1 15 65 | LICENCE NO. 381-196 | COMPANY CAR NO.

	172	369	63	47
			9	46
1-1000 gal			28	00
	Tax		1	11
3540748	Total Amount		101	98

PURCHASER'S SIGNATURE
X Beatrand C Tyson M.D.

GULF OIL PRODUCTS

BILLING INVOICE

Meraux Louisiana 08253

Dr B. Tyson
Plaquemine

Paid 12/15/64
Cash

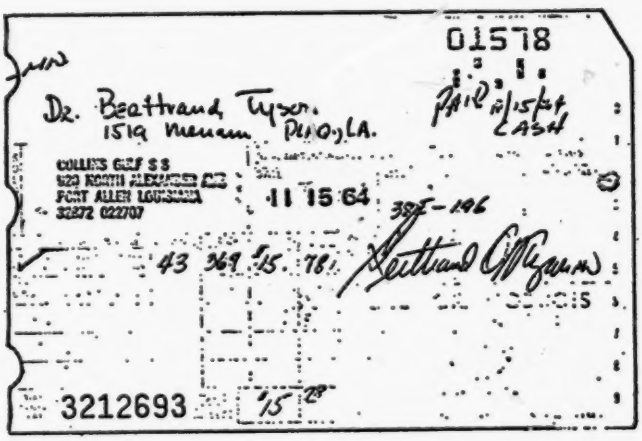
COLLINS GULF S S
920 NORTH ALEXANDER AVE
PORT ALLEN LOUISIANA
70767 022707

12 15 64 381-196

228	369	82	53

Beatrand C Tyson M.D.

3212694



01578

Dr. Beatrand Tyson.
1519 Meraux Phone, LA.

PAID 12/15/64
CASH

COLLINS GULF S S
920 NORTH ALEXANDER AVE
PORT ALLEN LOUISIANA
70767 022707

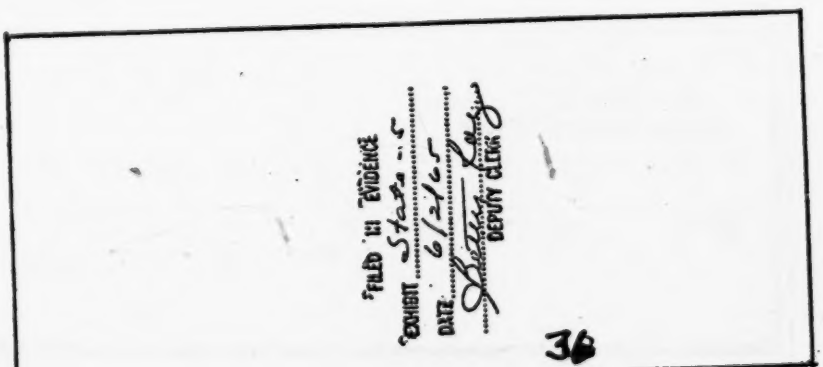
11 15 64 381-196

43	369	15	78

Beatrand C Tyson M.D.

3212693

15 28



FILED IN EVIDENCE
EXHIBIT State - 5
DATE 6/2/65
DEPUTY CLERK

FILED IN EVIDENCE
EXHIBIT State - 3
DATE 6/2/65
DEPUTY CLERK

FILED IN EVIDENCE
EXHIBIT State - 1
DATE 6/2/65
DEPUTY CLERK

FILED IN EVIDENCE
EXHIBIT State - 2
DATE 6/2/65
DEPUTY CLERK

No.

DATE 1-21-19 64 84-14 632

PAY TO THE ORDER OF Hall Mfg. Co. $ 353.93

Dollars

FIDELITY NATIONAL BANK

MARION HOTEL

Hall Mfg. Co.

Filed in Evidence
Exhibit State — 6
Date 6-2-65

Betty Ray
Deputy Clerk

February 3, 1965
Mr. Murphy Bell
Attorney at Law
971 S. 13th Street
Baton Rouge, Louisiana

Re: Avis Rent A Car
Rental Agrement #4228103

Dear Mr. Bell:

Consistent with our telephone conversation of even date, I have included herein information relative to an indebtedness owed my client by Dr. Bertrand Tyson, 1519 Meriam Street, Plaquemine, Louisiana. The above referenced rental agreement shows total charge of $858.60 less credits of $274.67, $224.67 for gasoline and an initial $50.00 deposit, leaving a net amount due of $583.93. The last referenced figure has been paid by Dr. Tyson to Avis Rent A Car; however, additional charges in the sum of $176.43 are now claimed as specified below.

Your client claimed total credits for gasoline in the sum of $224.67. This figure is not substantial by individual credit cards, but rather is proved only by statements of general purchases. The rented vehicle was driven a total of 4,436 miles. Figuring 11 miles to the gallon, at 36.9

cents per gallon (which is entirely too high for the grade of gasoline to be used in this automobile) the total figure comes to $146.39. This is giving the benefit of doubt to your client on two points, i.e., the mileage per gallon and the price of gasoline. This leaves a difference between the amount claimed and the amount as figured above of $78.28. This vehicle only had 7,449 miles on it at the time it was leased, yet upon its return all tires were completely worn out. These tires cost $25.00 a piece. Granting your client credit for prior depreciation, one-third (1/3), a balance is due for tires of $83.25. Additionally, a jack valued at $8.90 was missing from the vehicle upon its return, and there was a undercharge for insurance of $6.00.

These charges, as referenced above, when totaled together, come to a sum of $176.43 still due and owing by Dr. Tyson. Your immediate attention to this matter is requested, and I would appreciate an early reply as to your client's intentions in this matter.

Very truly yours,

Charles O. Simmons, Jr.
COSJr/plr
bcc: Mr. R. B. Bowers

blind P.S. Mr. Bowers

Dear Mr. Bowers:

I have conferred with Murphy Bell on this matter, and he advises me that arraignment was had this morning at which time he plead his client not guilty to the unauthorized use of a motor vehicle. He also suggested that if the court should find his client not guilty, serious considera-

tion will be given to a possible suit against Avis Rent A Car for damage to Dr. Tyson's reputation, etc.

I told him that you are in the business of renting automobiles and your primary concern was to be reimbursed for the use of this automobile and for damages done. I will not use the threat of continued prosecution as a tool towards collection of a civil indebtedness; however, I feel that if full retribution is made in this matter, you should withdraw your complaint.

Very truly,

Charles O. Simmons, Jr.

COSJr/plr

TRANSCRIPT OF TRIAL
IN THE
NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CRIMINAL SECTION
No. 52,627

STATE OF LOUISIANA,
Appellant,

versus

DR. BERTRAND OLIVER AUSTIN TYSON,
Appellee.

HEARD JUNE 2, 1965
HONORABLE FRED S. LEBLANC,
JUDGE PRESIDING.

APPEARANCES:
SARGENT PITCHER, JR., ESQ. and
RALPH L. ROY, ESQ.
For the State

MURPHY W. BELL, ESQ.
For the Defendant

Reported by:
Betty Roy

Filed June 10, 1965

Juanita M. McNeil
Dy. Clerk of Court

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MR. PITCHER: At this time, in view of the fact that there have been numerous motions filed and the plea withdrawn, I ask that the accused be rearraigned on the amended bill.

MR. BELL: Did you say amended bill?

THE COURT: Has the bill been amended?

MR. PITCHER: We ask that it be amended now. Mr. Roy, in his answer to the bill of particulars, said that it would be amended.

MR. BELL: Judge, if it is going to be amended we want some time to study the bill and prepare for the case. We aren't

going to trial on an amended bill; we are going to strenuously object.

THE COURT: If the amendment is in conformity with the answer to the bill of particulars why you know exactly what he is going to be tried on.

MR. ROY: I would like to ask leave of court to amend the bill as follows. Would you read the bill please?

(At this time the bill of information, as amended, was read by the clerk.)

MR. BELL: May I see the bill?

(Bill of information tendered to counsel for the defendant.)

MR. BELL: I want to reurge my objection to going to trial on the amended bill at this time, Your Honor, and I would like to request the court to give us sufficient time to file a motion to quash on the amended bill and to prepare for the amended charge. I would like the record to state that this is our first knowledge that the bill was amended, today.

THE COURT: Well, it was just now amended.

MR. BELL: That's right, and we would like to have sufficient time to study the

bill and to file any pre-trial motions we desire attacking the make-up of the bill and to find out if the bill is properly confected and made up, and I feel that to force us to go to trial on the day the bill is amended, and we have to be rearraigned, is depriving us of our opportunity to prepare properly for this trial, a deprivation of due process.

THE COURT: Let me inquire of the District Attorney. Mr. Pitcher, was there an application for a bill of particulars filed in this case?

MR. PITCHER: Yes, sir, there was an application for a bill of particulars and also a motion to quash, which Your Honor overruled. We answered the application for a bill of particulars in which we stated that the bill would be amended using the words that he did use this automobile on or about January 15th, 1965. This answer to a motion for a bill of particulars, if Your Honor please, was filed in this court and given to counsel on March 1st, 1965, almost three months ago. I might add further, if Your Honor please, that every delaying tactic known to the legal profession has been used in this case, including removal, attempted removal, to the Federal Court. This case was removed, Judge West remanded it; Judge West refused a stay order; Judge Minor Wisdom gave a stay order; the case

was argued by Mr. Roy at the Fifth Circuit of Appeals before the Honorable Judge Tuttle, of a panel composed of the chief judge of the Third Circuit, the chief judge of the Washington, D. C. Circuit, and the chief judge of the Fifth Circuit, at which time Judge West's order was reinstated and the case was remanded, and I might state further that counsel for the accused in this case filed an affidavit in the case in Atlanta, Georgia, where Mr. Roy argued this case, without ever letting us know that it was being filed and it was too late to even answer the affidavit filed by opposing counsel and his client. Not only did they do that but after they weren't satisfied with what the Fifth Circuit gave them they applied to Justice Hugo Black for a stay order, which was denied yesterday, and I respectfully submit to Your Honor that the State doesn't need to be hamstrung any longer.

THE COURT: Well, I will hear you further if you want to say something further.

MR. BELL: We just want to obtain our rights from the criminal procedure of this state and under the Federal procedure to handle this case in the way which we think that it should be handled under the factual circumstances of the allegations expressed in the bill of information, and I think

everything we did in this case, despite what Mr. Pitcher said, has been perfectly proper, legal, ethical, and according to law. Our certificates have been filed in the record to that extent, and I don't see where the statement could be made that we have tried deliberately to mislead him by filing an affidavit without giving him notice it would be made. Notice was served properly, according to law, according to the rules of procedure. We feel — of course this is an example here. If they wanted to amend the bill, like he said we argued the motion to quash some three months ago and there was some talk about amending the bill, why I don't see why they should wait until the day of the trial to amend the bill and then force us to go to trial under these unfavorable circumstances without our even having a chance to attack the validity of the bill.

THE COURT: Well, you have had since the answers—

MR. PITCHER: March 1st.

THE COURT: March 1st, because for the purpose of attack the answers to the bill of particulars is to be considered along with the bill of information itself, and you had that information so you are not taken by surprise. The State has committeed itself to the proposition that they are going

to try this accused on the basis of the answers to the bill of particulars, and the answer sets forth—

MR. PITCHER: On or about the 15th of January. The bill was amended to show the 17th of January, which is on or about. We could even amend this bill, if Your Honor please, to conform to the evidence at the conclusion of the case as far as the date is concerned. That is a very simple procedure.

THE COURT: The court is going to overrule your motion, counsel. You can take your bill ,but I don't see how in the world you could be taken by surprise or how in the world you could be placed at a disadvantage when the State committed itself back at the time—was it March?

MR. PITCHER: Yes, sir.

THE COURT: And the State couldn't vary that, they are bound by that; any evidence introduced would have to be in conformity with the answer to the bill of particulars, and the answer to the bill of particulars forms a part of the bill of information for the purpose of a motion to quash or demurrer.

MR. BELL: To which ruling we respectfully except and ask that the amended bill

and the ruling of the court all be made a part of the formal bill of exception.

THE COURT: We are going to arraign the accused on the amended bill unless you waive arraignment.

MR. BELL: We will waive the arraignment.

THE COURT: All right, you may proceed.

ROBBIE ARMITAGE, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q. State your full name please ma'am.

A. Robbie Armitage.

Q. Miss Armitage, where were you employed on or about January 15th through the 21st, 1965?

A. Avis Rent-a-Car.

Q. I show you a contract written to Bertrand Oliver Austin Tyson, 1519 Meriam Street, Plaquemine, Louisiana, being Number 4228102, and ask you if you recognize the initials on the bottom of that contract, R A?

A. Yes, I do.

Q. What does that stand for?

A. Those are my initials.

Q. This contract stamped paid, was that given by you to Doctor Tyson?

A. It was.

Q. When the car was turned in?

A. It was.

Q. Do you see Doctor Tyson in the courtroom?

A. Yes, I do.

Q. Would you point him out?

A. On my right.

Q. Now, Miss Armitage, I show you a check in the amount of $583.93, made payable to Avis Rent-a-Car, signed Bertrand O. Tyson, M.D., and ask you if that is the check that was given you in payment of that contract?

A. Yes, it was.

Q. Now, Miss Armitage, at the time this car was returned where were you working?

A. I was working for Avis Rent-a-Car and we were housed in the Parliament House Hotel.

Q. Is that in the City of Baton Rouge?

A. It is.

Q. Parish of East Baton Rouge, State of Louisiana?

A. Right.

Q. At the time this automobile was returned, I note on this contract that there were claimed certain credits for gas. Can you explain these to me, please ma'am, on this contract?

A. Well, to the best of my ability. When a car was in use over a period of time any gas that the renter put in the car he kept the tickets, brought them in at the time the contract was to be terminated, and was refunded the money, or if it wasn't a refund it was applied to the bill.

Q. On this contract here, can you tell the court how much money was claimed as a credit?

MR. BELL: If Your Honor please, this line of testimony has no relevancy to the charge of unauthorized use of a movable. We are going to object to any further inquiries along this line. Further, we don't feel that the proper foundation has been laid to even inquire into the unauthorized use of a movable because I think the bill of information reads that he intentionally used, took this car, within the Parish of East Baton Rouge, and there has been no testimony or evidence introduced that the car was used inside the parish, and until

this has been established we are going to object to any further testimony along this line going into the details of the contract. This is not a civil suit, it is a criminal prosecution.

THE COURT: I overrule the objection.

MR. BELL: I want to except because I don't think it is relevant, and I would like the questions propounded to the witness by the District Attorney, the objection of counsel and the ruling of the court be made a part of the formal bill of exception.

Q. Miss Armitage, did you see the accused, the defendant in this case, Bertrand Tyson, drive that automobile up to your office that night or that afternoon?

A. Yes, sir.

Q. That was in the Parish of East Baton Rouge, wasn't it?

A. Yes, Sir.

Q. And what was that date please, ma'am?

A. January 21st, 1965.

Q. Now I show you these tickets with the name Bertrand Tyson, M.D., from Collins Gulf Service Station, Port Allen, Louisiana, and ask you if those are the tickets he presented, among others, for credit for the gasoline that he said he used in this automobile?

A. True.

MR. BELL: Objection, no relevancy—I don't see any relevancy to this. What relation do the tickets have to do with the unauthorized use of a movable? I object to that as being irrelevant to this prosecution.

MR. PITCHER: If Your Honor please, I might answer it this way. I put Miss Armitage on — she is from Clinton and I am trying to make this as brief as I can. The opposing counsel filed an affidavit, that I have referred to already, in the Federal Court in which he claimed, and he signed an oath, that this man had received a contract and a receipt paid in full and a full acquittance granted for this authomobile, claiming that there could be no unlawful use, illegal use of a movable, and that's what I want to get away from right now.

MR. BELL: Your Honor, that has nothing to do with the prosecution in this court. That was a Federal Court procedure. That is not part of the record in this court.

MR. PITCHER: It is going to be.

THE COURT: Well, it may not be a part of the record, but anything pertaining to this contract would be relevant in the opinion of the court. She has testified

about the contract, and anything that the contract provides, or anything pertaining to the contract, would be relevant in this case, because the question before the court is whether or not he unlawfully used this car.

MR. BELL: Within the purvue of Revised Statute 14:68.

THE COURT: Certainly, that's what we are trying, so I overrule the objection.

Q. I ask are these the tickets he showed you?

A. They are.

Q. One ticket, Number 3212694, shows 228 gallons, does it not?

A. Right?

Q. And for an amount of $82.53.

A. True.

Q. Another ticket shows 172 gallons of gasoline for an amount of $63.47, is that correct?

A. Correct.

MR. BELL: Your Honor, I don't want to be — but it seems to me the tickets ought to speak for themselves. The prosecutor is dictating into the record some-

thing I don't know if it is true or not, and I think it should be done properly, according to law. Let's let the evidence, if it is relevant and properly identified, speak for itself without all this going into the record that hasn't been properly identified, properly shown.

THE COURT: I think she has already identified them. They were presented to her by the defendant.

MR. BELL: These figures in here he is calling out—

THE COURT: You can look at them before he interrogates the witness about them, but I think the documents have been identified. You may examine them.

MR. PITCHER: In connection with the witness's testimony, if Your Honor please, I offer, produce and file in evidence the tickets referred to by the witness and the contract identified by her, together with the check dated 1/21/65 made out to Avis Rent-a-Car by Bertrand O. Tyson, M.D., identified by the witness, and ask that they be marked with the proper State numbers. (Exhibits numbered State-1, State-2, State-3, State-4 and State-5, respectively.)

Q. When did you first go to work for Avis Rent-a-Car, Miss Armitage?

A. December 7th, 1964.

Q. 1964, and how long had you been working there when Doctor Tyson brought this automobile back?

A. Well, he brought it back on the 21st of January, so it was something over a month.

Q. Had you on any other occasion ever had anybody present you with gas tickets showing such an amount as these and claim credit on them for an automobile?

THE COURT: Let them be filed in evidence in this case.

MR. BELL: I object, that is irrelevant.

MR. PITCHER: I will withdraw the question.

Q. At the time he gave you these tickets did you make a complaint to him about the amount of gas?

A. We checked the gas tickets. He gave them to me and I checked them off, using the adding machine, and it was quite a large sum according to mileage, and I believe Doctor Tyson had driven the car in town quite a large sum according to mileage, and I believe Doctor Tyson had driven the car in town quite a bit and could account for not getting maybe the mileage one would on the road.

Q. Did you check the mileage on the car yourself?

A. No.

Q. Who filled in the amount of the mileage?

A. I filled in the amount. A starter that worked with us brought the mileage in.

Q. And did Doctor Tyson—

A. The renter always brings it in too as a rule.

Q. Did he bring it in?

A. I believe Doctor Tyson did bring his mileage in.

MR. PITCHER: I tender the witness.

CROSS-EXAMINATION

BY MR. BELL:

Q. Miss Armitage, that check you got there, did you run it through the bank?

A. I had nothing to do with that because I worked 3:00 to 11:00 and it was left for the administrative people to handle the next morning.

Q. It has no bank stamp on it, has it?

A. There is none.

Q. Do you know for a fact whether or not that bill was paid?

A. I received the check and I stamped the contract paid and gave it to Doctor Tyson.

Q. Did you — were you the one who called Doctor Tyson and ask him to bring the car back?

A. No.

Q. Were you aware of the fact that your superiors had ordered him to bring the car back?

A. I was aware that the car was on rent and it should be brought in.

Q. As far as you were concerned then he had a right to bring it back to the company?

A. I don't believe I understood your question.

MR. PITCHER: I object to that, if Your Honor please. It calls for conjecture on her part.

THE COURT: It would call for a conclusion. I would have to sustain that.

Q. Who is your immediate superior?

A. The president of the corporation was Roy Bowers, and he would be the superior.

Q. Did you talk to him about the Tyson account.

A. I had nothing to do with that part of the business. I worked 3:00 to 11:00 as a clerk and I had nothing to do with banking or anything like calling a car in would have been not under my jurisdiction.

Q. Well you did accept the—

A. Because I was on duty, yes.

Q. You did accept the gasoline credits and other credits that you applied to the Tyson account?

A. True. The contract stands as I made it.

Q. What was the total amount of the account, the charges?

A. You mean the balance due?

Q. Yes, I mean what — after you looked at the mileage and you computed the per diem and the mileage, what was the total amount of the bill before you deducted the gasoline charges?

MR. PITCHER: If Your Honor please, I make the same objection counsel made a moment ago, that the contract is the best evidence of what it purports to say and the information contained on it, which is the mileage.

MR. BELL: I will withdraw the question. He has introduced the contract.

Q. But you did approve that contract and marked it paid, Miss Armitage?

A. I took the mileage; I did the figuring then of the contract. I was the only one on duty at the time and this is the end result you see here.

Q. You marked it paid?

A. True. I received a check.

Q. And discharged Doctor Tyson from this obligation?

MR. PITCHER: I object to that as calling for a conclusion of law.

THE COURT: Unless she did something other than what she did I think the question would be improper. If she wrote him a letter telling him he was discharged, or if she told him personally he was discharged. She has testified what she did; she marked it paid—

Q. You marked it paid and told him he could go?

A. It was customary when an agreement was paid to mark it paid and give the renter a copy.

Q. You received the keys to the car?

A. True, the car and the keys.

Q. And you gave him a paid receipt and he left?

A. I received a check.

BY THE COURT:

Q. That particular check?

A. This check.

BY MR. BELL:

Q. And as far as you were concerned the account was paid?

A. Well, I had nothing more to do with it.

MR. BELL: That's all, thank you, Miss Armitage.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q. Well, let me ask you this question. If he had not given you this check and had not given you any cash, would you have marked it paid?

A. I could not.

Q. Then you relied on this check to mark this contract paid, is that right?

A. True.

MR. PITCHER: Thank you, that's all.

Witness Excused

ROY B. BOWERS, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PITCHER:

Q. State your full name please, sir?

A. Roy B. Bowers.

Q. What is your occupation, Mr. Bowers?

A. I am the president of Gulf Shores Leasing Corporation, which has the Avis Rent-a-Car franchise in Baton Rouge.

Q. Mr. Bowers, I show you a document purporting to be a contract between Bertrand Oliver Austin Tyson and Avis Rent-a-Car, and ask you if that is one of your contracts?

A. It is.

Q. I also show you a check made payable to Avis Rent-a-Car, dated 1/21/65, and ask you if that conforms to the date that this automobile was returned under this contract?

A. It does.

Q. And I further ask if you personally attempted to get the money for this check on the 21st or 22nd or the 25th of January?

A. Yes, I did.

Q. Did you get it?

A. No, sir.

Q. Why not?

A. The bank told me that there were not sufficient funds in the account to clear the check.

Q. Now, would you tell the court in your own words just when you first attempted to get this automobile back from the defendant in this case?

A. I called Doctor Tyson in Plaquemine on several occasions. I do not have the exact dates of all of the calls, however, I have noted on a copy of the contract, which I had for followup purposes, that I did call him on January 4th, 1965, at which time he definitely promised to return the car on January 8th. When he did not return the car on January 8th I called him again, and after being unable to get him on several occasions I did reach him on January 15th and told him that we had to have the car returned, and that if he didn't return it on the next day that I would have to swear out a warrant to have the car returned.

Q. What did he tell you?

A. He said "Well, why don't you do that."

Q. Why don't you do that. Did you do that?

A. Yes, sir, on the 18th I did go down and swear out a warrant for the return of the car.

Q. For unauthorized use of the car?

A. For unauthorized use of the car.

Q. And when did the car reappear at your office?

A. It was checked in at our Parliament House location on January 21st.

Q. Three days after you signed the affidavit for his arrest?

A. That's correct.

Q. And at that time you were given what is commonly referred to as a hot check. Not you, but the company was given what is commonly referred to as a hot check—

MR. BELL: I object, Your Honor.

Q. —to get this contract—

MR. BELL: I want to object.

THE COURT: Well let him finish the question, counselor.

MR. BELL: He is leading the witness.

THE COURT: I know, but he can at least ask the question and then you can object after the question is asked. All right, complete the question and then I will rule on it.

MR. PITCHER: I will rephrase it.

Q. I ask you if you received this check which we have been discussing and which has already been introduced in evidence as payment, alleged payment, for this contract?

A. Yes, sir.

Q. And were you able to negotiate that check on the 22nd day of January?

A. When I presented it for payment at the Fidelity National Bank the day after it was presented to my clerk it was refused as being insufficient.

Q. N.S.F.?

A. N.S.F.

Q. Now, hasn't there been, or has there been any correspondence between your attorney, a Mr. Charles O. Simmons, and Murphy Bell, representing Doctor Bertrand A. O. Tyson concerning this account?

A. Yes, sir, he wrote him a letter--

THE COURT: Who wrote who?

A. My attorney, Mr. Simmons, wrote a letter to Murphy Bell asking for additional payment on the con tract because of excessive claims for gasoline and switching of tires—

MR. BELL: Your Honor, this is in the nature of a civil dispute between—

MR. PITCHER: This is not a civil dispute, and this is not a clean hands situation, including counsel, if Your Honor please.

THE COURT: Just a minute. Go ahead and make your objection, counsel, and I will rule on it.

MR. BELL: It has no relevancy to the prosecution, what dispute over civil matters that arose between Tyson and the Rent-a-Car company.

MR. PITCHER: Just by way of argument I might say that a hot check is not a civil matter; switching of tires is certainly not a civil matter.

MR. BELL: There has been no evidence—these are false accusations against my client. There is no evidence that a hot check was given; we have a check there that wasn't even stamped by the bank. We only have the unsupported word of this man here that—

MR. PITCHER: We only have your unsupported word in the affidavit that he was given an acquittance, after you got a letter on February 3rd telling you there was a balance due.

MR. BELL: Why don't you ask him if he was paid?

THE COURT: I will tell you, counsel, if this witness tells this court that he presented that check and the bank *refused* to honor it because the maker of the check had insufficient funds, that is evidence before this court that the check was a bad check.

MR. BELL: The weakest sort of evidence, Your Honor, especially in view of the fact that he was paid the same day he presented it. I think the prosecutor has never asked this man if he was paid the next day. He is implying that he wasn't paid, and waving this check that never went through regular bank processes.

THE COURT: Well you can take him over on cross-examination.

MR. BELL: I know, that is what I intend to get to, but I am seeing how this thing is being slanted on direct to make it appear that this man has not paid this Avis Rent-a-Car Company. He was paid the next day, and he knows it.

MR. PITCHER: Judge, I submit it is irrelevant anyway. It doesn't make any difference whether he was ever paid. We will admit he was paid something, but we will not admit he was paid the full amount due, and we will not admit that he was paid until after the man had been charged with unauthorized use and after a threat was made by his attorney for a malicious prosecution suit in the event he was acquitted today.

THE COURT: Well, I think all of this is relevant testimony. He has testified the check was turned over to him; the young

lady has already testified that she received the check and she didn't have anything to do with the handling of the check thereafter.

MR. PITCHER: I will cover that, Judge.

Q. After you couldn't cash the check at the bank did you talk to Lawyer Murphy Bell?

A. Yes, I did.

Q. And what did you tell Mr. Bell?

A. I told Mr. Bell that I had tried to get the check cashed at the bank and that there were not sufficient funds to cover it.

Q. And what did Mr. Bell tell you?

A. Mr. Bell told me that — he said "Well, I imagine that Mr. Tyson thought that you would submit the check with your regular bank deposit and that it wouldn't reach the bank until the following Monday. Why don't you submit it again on the following Monday and perhaps there will be sufficient money there."

Q. That is what Mr. Bell told you, perhaps there would be sufficient funds there.

A. That is what he told me on the telephone.

Q. And were there sufficient funds the next Monday morning when you went to the bank?

A. No, sir, there were not.

Q. And when did the accused bring in the cash money to pay off this deal? I mean to pay off what he said he owed.

A. It was two or three days later, after I had again called Mr. Bell, and he said "Well, I will get hold of Doctor Tyson. I don't know why he didn't come in and make that check good like I told him to."

Q. Like I told him to. And who was on duty when the cash money was brought in?

A. My wife.

Q. Now would you look at that contract, Mr. Bowers, and tell the court just how much would have been due under the terms of that contract before any credits were applied or requested?

A. Eight hundred, thirty-three dollars and sixty cents, less a fifty dollar deposit which Doctor Tyson gave to the rental agency when he rented the car.

Q. Eight hundred what?

A. Thirty-three, sixty.

Q. In other words some seven hundred and eighty some odd bucks I suppose. My mathematics is not too good, but would you deduct the fifty dollars for me and tell me what the actual balance would be?

A. Seven hundred eighty-three dollars and sixty cents.

Q. And how much—. You say that Doctor Tyson

brought in some cash three or four days after you talked to his attorney, Murphy Bell, on the following Monday, is that right?

A. Two or three days after that he turned it into my office. He didn't turn it in to me personally.

Q. He turned it in to your office. I show you a calendar for 1965 and ask you what day of the week the 21st fell on?

A. Thursday.

Q. And your testimony is that you attempted to cash that check the following Friday, is that right, the 22nd?

A. That's right, as soon as the bank opened, because I doubted it was good.

Q. And then you called his attorney and his attorney told you that he probably thought you were going to put it in the regular course of business, which would have been, according to his attorney, the following Monday, is that right?

A. Yes, that it would have been put in my regular deposit of the day following the day that I received the check, so that it would not have reached the bank until the following Monday.

Q. Do you know what kiting a check is, Mr. Bowers?

A. Yes, sir.

Q. What is that?

A. That's writing a check and putting it in the bank other than the one on which it is drawn so that it will have time to — money will have time to be deposited in the bank on which it is drawn by the time the check gets there.

Q. Yes, sir. In other words the time it takes to put that check through the clearing house the man who drew the check would then have time to make a deposit to cover it, is that right?

A. That's correct.

Q. Now, on Monday morning you went back to the bank to attempt to get your money on that check and you were unsuccessful again?

A. That's correct.

Q. And either the next night, which would have been, or correct me if I am wrong, which would have been the 26th of January, Tuesday, is that right?

A. Yes, sir.

Q. Either the 26th or the 27th is when the man came in with six one hundred dollar bills, is that right, sir?

A. According to what I am told. He didn't bring it to me.

Q. You don't know that yourself, but you know that there were six hundred dollars there one of the mornings after this?

A. Yes.

Q. Applied to this account?

A. Yes, sir.

Q. Now, after you got that money, which was on January 27th or the 28th, did you instruct your attorney to write this letter to Murphy Bell making demand on Doctor Tyson, through his counsel, for $176.43?

A. Yes, I did.

Q. All of this, correct me if I am wrong, the contract stamped paid, the car returned, the check given, the cash money turned over to some employee, was done how long after you signed an affidavit against this man charging him with unauthorized use of a movable?

A. Well I signed the affidavit on the 18th and this was — the car checked in on the 21st of the same month, and this letter was written on February 3rd.

Q. In other words the car was turned in three days after you signed the affidavit?

A. Yes, sir.

Q. Mr. Bowers, when you talked to Doctor Tyson on the 15th I believe you said you told him to have the car back on the 16th and if he didn't you would have to take it up with the District Attorney's office, is that correct?

A. That's correct.

Q. And his advice to you was why don't you do just that, is that correct?

A. That's correct.

Q. Now, from the time you talked to him on the 15th did anybody give him any authority to use that car past the 16th of January?

A. No, sir.

Q. Could you identify this letter, Mr. Bowers?

A. Yes, sir, that's a copy of the letter my attorney wrote to Mr. Bell.

Q. And you gave it to the District Attorney's office?

A. I gave it to the District Attorney.

MR. PITCHER: In connection with the witness's testimony, I offer, produce and file this letter, and ask that it be marked with the proper State number. (Letter marked State-6 for identification.)

I tender the witness.

CROSS EXAMINATION

BY MR. BELL:

Q. Mr. Bowers, that contract you have got there, this is a copy of the contract that you authorized Doctor Tyson to use this car, isn't that right?

A. This is a copy of the contract that was prepared by one of my rental agents.

Q. Well you authorized it through your agency, through the person who worked for you, is that right?

A. The person who wrote the contract was authorized by me to rent cars.

Q. Now what was the original term of the contract? How many days did you rent the car for?

A. It was rented on November 20th at 17.7 hours, and it was to be returned not later than November 23rd of the same month.

Q. Now, how do you handle the person who—

A. I beg your pardon?

Q. I mean is it usual for a person — do you authorize persons who rent cars for a specified number of days to keep the car maybe two or three days later, or several days later maybe, and then come in and pay for it, or do you generally charge them with unauthorized use of a movable?

A. In this case Doctor Tyson put up a fifty dollar deposit, which is the estimated amount that he would owe for the rental of the car during the time that he kept it. If he wanted to keep it any additional time he was required to come in and put up an additional deposit.

Q. Does your contract specify that provision, to come in and put up an additional deposit?

A. No, but it does specify that he is not to keep it past the time which the contract says, and if he wants to keep it longer he must request permission to do so.

Q. Where is that in the contract, Mr. Bowers?

A. Right here. Vehicle will be returned not later than November 23rd.

Q. Yes, that tells when he will return it. Now when you decided that he had—. When did you decide that he had committed a crime?

A. When he refused to return the car.

Q. And you felt that under the law, the unauthorized use statute, that your will bring into play a criminal statute.

A. I had no other alternative, no other way, to get my car returned. I could not forcibly take it from him. I had to rely on the law to get my car back.

Q. Mr. Bowers, you are a business man of some experience, aren't you?

A. I think so.

Q. Do you own any rent houses?

A. No, sir.

Q. Have you ever rented from anybody?

A. Yes, sir.

Q. A person who owes rent, do you have them put in jail or go to court?

MR. PITCHER: Your Honor, I object to that. There is no law providing for putting anybody in jail for failure to pay rent. Counsel knows that.

MR. BELL: That's the whole purpose here, I am glad he admits that, because here is the problem. We have a law of lease in this state that applies to movables and immovables alike, and the law of leasing cars or leasing houses is no different, and if he is in the rental car business then what he should have done is to apply to a proper civil court of jurisdiction to get a court order to get his car back pursuant to the law of lease. That's what we are talking about.

THE COURT: Well in this state we have a criminal statute dealing with the use of movables; either the taking or the using without the owner's consent. Now it has no analogy to renting a house. A house is an immovable and different laws apply, and there is no criminal statute, as Mr. Pitcher points out, for keeping immovable property beyond a lease time. The owner can file an eviction suite, file a suit and put them out, file a suit for the money, but in this situation here we are dealing with a criminal statute which prohibits

anyone, under pain of penalty of fine or imprisonment, or both, from either taking or using a movable without the owner's consent, but without the intent of permanently depriving him of his property.

MR. BELL: Your Honor, I checked the history of this statute. This is a statute growing out of the old joy ride, aimed at people taking people's cars on Sundays, going out for a ride, and coming back and returning the car, and, of course this is one, I think, is one of the most perverted uses of 14:68 that I have ever seen in my life.

MR. PITCHER: I regret that counsel doesn't like the way we pervert the law. I don't like the way he perverts it either, so we are off to a level start.

THE COURT: Well you may use that in argument, but it has nothing to do with this case now while we are taking the testimony.

Q. Did you, when you decided that Doctor Tyson had committed a crime, did you give him any kind of notice, Mr. Bowers?

A. Yes, I did.

Q. You sent him a certified letter saying bring your car back?

Q. You never did write him a letter and give him a ten days notice?

MR. PITCHER: I object, if Your Honor please. There is nothing in the law that requires ten days notice on a deal like this.

THE COURT: I sustain that.

MR. BELL: Under the law of lease, Your Honor, I submit that there is a ten day notice requirement, and he admits there is a lease there.

THE COURT: Yes, but the lease — the terms of the lease had expired and he demanded that the car be returned.

MR. BELL: Under the law of lease, Your Honor, when a person holds over after lease there is a certain specified procedure you go through, even after a lease has expired, that the lessor is supposed to give the lessee a ten day notice, and this applies to movables and immovables alike, and I submit that this case is no different than renting a house or renting anything else.

THE COURT: I can't agree with that. If we didn't have this criminal statute I would go along with you, but there is a criminal statute covering this very situation.

MR. BELL: And, of course, you have ruled under the motion to quash that it has to do with either the taking or using, but I submit that under the jurisprudence heretofore rendered by the court that it is supposed to be the unlawful taking and using. Here what you are doing in this case is trying to make criminal lawful acts. This man has done nothing wrong.

THE COURT: Well, I'll tell you counsel, the English language is very plain, and we have the rule of interpretation, I think it is Article 3, words are to be used in their usual sense, as you know, in this code. That is Article 3, and 68 says take or use. Not take and use, but take or use, and the State could charge the crime conjunctively by saying taking and using, or the State could say take without the owner's consent, or the State could say use without the owner's consent.

MR. BELL: They use the word "unlawfully" in there too, Your Honor.

THE COURT: That's right.

MR. BELL: You use unlawfully, and I am submitting that this is lawful use, and I tried to find out from Mr. Bowers when did he find out that this man was unlawfully using the car.

Q. Did you ask him to bring it back?

MR. ROY: Your Honor, I wish to correct counsel on his interpretation of the bill of information, as amended. The words now, as amended, are that he intentially used, without the authority of the owner, this automobile. The word "unlawfully" was stricken by the amendment.

THE COURT: Intentionally is the word used in the statute.

MR. BELL: He intended to use the car, there is no doubht about that, he signed a contract. Are you saying it is against the law to use it, Mr. Roy?

MR. ROY: He is charged with intentionally using it without the authority of the owner.

THE COURT: Without the owner's consent.

MR. BELL: But it wasn't unlawful use.

THE COURT: Sure it is unlawful if the law makes it a crime.

MR. BELL: Well that is what I am trying to find out. You say it is an unlawful use. I say when did this Mr. Bowers decide that Doctor Tyson was unlawfully using the car?

THE COURT: He doesn't have to decide, the law speaks for itself regardless of his

attitude about it. He may be in error when the law was violated. The law speaks for itself. He can testify what took place, and not express any opinion on the law. He is not interpreting the law.

Q. When you called him up on January 4th — that is right, isn't it, Mr. Bowers?

A. And several times before.

Q. Several times before. Now you didn't sign out the warrant or sue out this warrant, or sign this warrant for his arrest until January 15th, is that correct?

A. The 18th.

Q. The 18th, but he had had the car for over a month, isn't that right?

A. That's right, and I tried for over a month to get it back, unsuccessfully.

Q. Did you consult with your attorney, Mr. Simmons, about getting the car back?

A. No, sir.

Q. You went to Mr. Pitcher for legal advice?

A. No, sir.

Q. Who drew up the warrant?

MR. PITCHER: I object to that as being immaterial.

THE COURT: I don't see where it is material at all. The law says any creditable person can make an affidavit charging a crime; he doesn't even have to have personal knowledge about the facts, and who draws it up, whether a young lady types it, that doesn't make any difference. If the Judge signs the affidavit and signs the warrant, that is a case of some consequences, where actually an affidavit was signed and a warrant was signed, but as to who actually confected the document by typing it or writing it, that is of no materiality whatever.

Q. You did extend the contract then after you talked with him several times?

A. I didn't extend the contract, I merely acquiesced in his saying that I will bring it at a later date, because I had no alternative.

Q. Which means that you didn't consider his unlawful use of the car until after he told you that he wasn't — to go sign the warrant, to go make out the warrant?

A. I finally signed a warrant as a last resort after all his promises to return the car were of no avail.

Q. So up until the time you signed the warrant he had your permission to use the car?

MR. PITCHER: I obejct to that, Your Honor.

THE COURT: He can ask him.

Q. I mean you did agree to his extension, is that right? I mean you may not have wanted to do it but you did agree?

A. I didn't agree to an extension. He said he will bring it back on a certain date. I said be sure you do.

Q. And you agreed to withhold, or to give your permission to bring the car gack without making his conduct criminal until —

A. I didn't make any agreement. I merely told him be sure you bring it back on that date.

Q. You don't consider that giving him permission?

A. No, sir.

Q. Now you were paid — what was the amount of cash money that was paid in regard to that contract?

A. $583.93.

Q. Now, about that letter that Mr. Simmons wrote me, that was more or less to take care of a dispute that you or your company and Doctor Tyson had with regard to the charges on gasoline and tires, isn't that right?

A. Yes, that was the dispute over the fact that the tires that came back on the car were not the tires on it when it was rented, and because the gasoline credits were excessive and he did not, as he is required to do, submit a separate gas ticket for each time he put gas in the car. Here he merely submitted summary tickets saying I put so many gallons of gas in the car, without any proof that he did so.

Q. Well I mean that wasn't spelled out in your contract that he had to have separate tickets?

A. He has to have proof that he put gas in the car.

Q. Well, now, that's true, but you didn't accept the proof, is that right?

A. That's correct.

Q. And so that meant you have a civil dispute between you and Dr. Tyson?

MR. PITCHER: I object to that. That's a conclusion of law.

THE COURT: That is a conclusion.

Q. Well, let's put it this way. You did not agree with Doctor Tyson's computation of the charges and credits?

A. I did not.

Q. And you turned it over to your lawyer?

A. That's correct.

Q. But Doctor Tyson did rent this car, or lease this car, from your company?

A. He rented it on a daily rental. We do not lease cars, we rent them on a daily basis.

Q. What do you call this, a lease or rental agreement?

A. We call that a daily rental agreement.

Q. Now when you get ready to compute a client's charge what figures do you use to figure the total bill? Have you

got a per diem you rent your cars, the particular car that Doctor Tyson had?

A. That's correct.

Q. How much per day?

A. This contract shows the daily rate was ten dollars a day.

Q. And how much per mile?

A. Ten cents a mile.

Q. So you could easily compute the charges that your clients have when they sign these contracts, regardless of whether the contract specifies any number of days or not, isn't that correct? In other words if this contract specified three days and the man held it for thirty-three days, you certainly wouldn't be out of sorts when he comes in to pay up his bill, would you?

A. Yes I would if it is a deposit account. Somebody who hasn't established credit at the time he rented the car then he is required to return the car when he has used up his deposit and put up an additional deposit.

Q. Well I mean you didn't spell that out in detail in your contract. You say it is supposed to be returned by a certain period, but you do have a way to figure what the total charge would be.

A. Yes.

Q. All you have to do is count the days and check the mileage.

A. That's correct.

Q. And ask them to pay you, is that right?

A. That's right.

Q. Now isn't that what you did in this Tyson case?

A. I did not, no.

Q. I mean your help, whoever is working under you, Mr. Bowers, isn't that what they did, what Miss Armitage did?

A. She computed the charges from the contract and accepted the gas tickets he turned in because she had no way of determining what the correct charges for gas were, other than the fact they were not presented in the required manner.

Q. In other words what you are saying is that she had no authority, or her acceptance of the credits and computations as offered by Doctor Tyson was not in agreement with the way you had it figured, is that true?

A. That's true.

Q. Mr. Bowers, on your contract on rental cars, do you have any other basis on which you compute the rental agreements other than —. Do you have a monthly rate?

A. It is shown right here on the contract, $175.00 a month.

Q. Now was Doctor Tyson's bill figured on a daily rate or a monthly rate?

A. It was figured on a monthly rate and prorated for the rest of the month because he called in and asked permission to do this.

Q. How many days did he actually keep this car?

A. Two months and one day.

Q. And you charged him a monthly rate?

A. We always do this. It is customary practice to show on our contracts all of the rates, the rate per mile, the rate per day, the rate per week and the rate per month, and we figure it by the method that will result in the lower rental. This is customary.

Q. And you gave Doctor Tyson the benefit of this monthly rate?

A. Yes, we did.

Q. And you still are giving him the benefit. Now the only thing — what you are saying is the only thing that stands between you and the settlement of this account is the dispute that exists between your company and Doctor Tyson as regards the tire credits and the gasoline credits?

MR. PITCHER: If Your Honor please, I object as irrelevant. I am not going to insist on my objection, but I am merely pointing out to Your Honor that we are not talking about any credits. We are talking about the unauthorized use of this movable.

MR. BELL: He brought it up, I didn't bring it up.

THE COURT: You have a right to cross-examine him on anything that he brought out, but I will tell you, frankly, this is a criminal proceeding, and any difference between this company and the defendant with regard to credits for the switching of tires or gasoline, or anything like that, which is a civil matter, or it could have been a criminal matter if they had decided to pursue that course about changing the tires, if that is a fact, I don't know if that is a fact or not, but we are just concerned now, the court is, with whether or not this defendant used this automobile without the owner's consent, after the owner had requested repeatedly that he return it and finally gave him a deadline and told him if he didn't return it he was going to have to seek action from the law, and, according to his testimony, the defendant said well you do just that, and apparently that's what he did. So I am only concerned, so far as this proceeding is concerned, with the criminal part of it, and that is whether or not this defendant on the date or dates alleged, had in his possession an automobile, and at that time he was using it without the consent of the owner of the car. All these credits and side issues have nothing to do with it.

MR. BELL: Well I didn't want to bring it up, Your Honor.

THE COURT: I am permitting you, counsel, to cross-examine on it because he brought

it out, and it may be of some help in a future civil suit, I don't know, but it is of no concern to the court in this proceeding.

Q. So, Mr. Bowers, actually as far as your company is concerned you gave Doctor Tyson the monthly rate, and the only thing that actually stood between you and Doctor Tyson at the time that he came in and tried to settle up was the fact that you didn't like the way he presented his gasoline bills and tire credits, and you felt that he owed you an additional difference of about a hundred dollars, a hundred and seventy-five dollars?

A. This is substantially correct.

Q. At all times you could compute Doctor Tyson's bill based upon the contract that he signed with your company?

A. Not until such time as he turned in the car.

Q. Oh yes, when he turned in the car. And you did initially give him permission to take this car?

A. But not to keep it as long as he kept it.

Q. But you did give him permission to take it under the terms of the contract?

A. We rented him the car for three days.

MR. BELL: I have no further questions.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q. Now, Mr. Bowers, on the 15th day of January when

you talked to Doctor Tyson and gave him until the 16th to bring the car in, at that time you had no way of knowing the mileage on that automobile, did you?

A. No, sir.

Q. You couldn't have computed what he owed you according to the mileage?

A. No, sir.

Q. You didn't have any idea of what gasoline he put in it, did you?

A. No, sir.

Q. So you couldn't have computed the — you couldn't have given him credit for the gasoline tickets?

A. No, sir.

Q. And he told you in answer to your remark if you don't bring this thing in by the 16th I am going to have to turn it over to the District Attorney, he said why don't you do that?

A. That's correct.

Q. At that time you had nothing to do with this contract as far as knowledge of what the mileage on the automobile was, what tires had been changed, what gas had been used, or anything else, had you?

A. That's correct.

Q. And when you signed that affidavit on the 18th

against him he still hadn't brought the automobile in, and he was using it without your consent from the 16th on, is that correct, sir?

A. Yes, sir.

MR. PITCHER: That's all.

RE-CROSS EXAMINATION

BY MR. BELL:

Q. At all times he was usng ths car wthout your permission, as you claim, Mr. Bowers, was he in this parish? Where was he at the time — weren't you talking to him in Plaquemine?

A. I talked to him in Plaquemine.

Q. That's right, you called him long distance, isn't that right?

A. That's correct.

Q. And you told him, you authorized him to bring your car back in this parish, isn't that right?

A. I told him to bring it back to the Avis rental station.

Q. And your office is in this parish?

A. That's correct.

Q. And you did tell him to bring the car back to your office?

A. Yes, I did.

Q. And he did that eventually, didn't he?

A. After I swore out a warrant.

MR. BELL: That's all.

REDIRECT EXAMINATION

BY MR. PITCHER:

Q. If he hadn't of brought it back you could have charged him with theft, couldn't you?

MR. BELL: I object.

THE COURT: I sustain the objection

MR. PITCHER: That's all, Judge, that's the State's case.

Witness Excused

STATE RESTS

MR. BELL: Your Honor, I am going to have to move for a directed verdict. I don't see where they have proved any charges here that this man committed any crime. I think by the testimony of Mr. Bowers, and the other witness, that the man went to a rental agency, signed a lease, and by the terms of the lease itself he had a built-in system for people who hold over after leases according to law. The law of Louisiana that gov-

erns these matters is the thing we look to. All we have here is a civil dispute, if you have got that, and to try to get this thing under the purvue of Revised Statute 14:68, which would have to do with a different type of conduct altogether, is beyond me. It appears to me when you look at the law, the civil law, the revised Civil Code governing this type of a situation that exists between Doctor Tyson and Avis Rent-a-Car Company, there is no way in the world you can make the conduct that Doctor Tyson engaged in in regard to his use of this particular car criminal. If you would say that the doctor, by refusing to obey the summary order of Mr. Bowers, not matter how wrong, or regardless of how much anger it might have caused Mr. Bowers, I don't believe that a criminal statute can be brought into play on the whim of an individual, and it appears to me that all the State is saying is when Mr. Bowers decided that Doctor Tyson used this car unlawfully then 14:68 came into play. Now we know that you cannot have a criminal statute made operative on the individual whim of one person, or any individual. A criminal law has to be clear. Now if this is criminal, what Doctor Tyson has engaged in — he lawfully rented this car and it should be governed by the law of lease, and if Mr. Bowers wanted his automobile heshould have consulted his attorney, and I am sure his attorney would have written or given Doctor Tyson the necessary ten-day notice, and it would have gone before a civil

magistrate; he could obtain a court order, and then if Doctor Tyson hadn't released the car he would have been put in jail. But here he is attempting to settle a civil matter by using the criminal processes of the state, and it is utterly impossible.

THE COURT: Let me ask counsel this. Suppose somebody gives you a bad check and notice is given, ten days notice, and you do nothing about paying the check, it gives rise to a presumption that you intended to defraud.

MR. BELL: That's right.

THE COURT: Now the holder of that bad check which you issued may proceed both civilly and criminally, and just because he has a right in civil court to get a remedy there is no reason why he cannot invoke the criminal statute as well, and that is what we have here. This statute covers the use of an automobile, the intentional using of an automobile but without the owner's consent. Now admittedly under the law of this state the owner of that automobile can proceed civilly and get out proper writs, as you know, have the car seized, sue on the contract, and he may do that or he may not do that, but he certainly if the conduct of a person who is using the automobile fails within the prohibition of some criminal statute, he certainly has a right to swear out an affidavit.

MR. BELL: Yes, sir. Now that same analogy is a very good one fo rthis case. The bad check is only at the time that the receiver of the bad check has given the maker the ten-day notice that the criminal statute comes into play.

THE COURT: That is not correct, and you know that isn't correct.

MR. BELL: Why is it not, Your Honor? I mean you can't prosecute him until you give him notice, unless the check is absolutely worthless, you have no account.

THE COURT: IF it is a bad check and it is presented and not honored you don't have to wait the ten days, but if you give him a written notice, registered letter, then that gives rise to the presumption —

MR. BELL: That the check is bad.

THE COURT: Yes, but you don't have to do that. The State might rely on other evidence to show criminal intent, they don't have to rely on that presumption, so I think your statement of the law is incorrect.

MR. BELL: There is some exception to the rule, but it has been by interpretation of the worthless check statute that the statute itself proscribes that in order to prove the presumption of intent to steal you have got to give the statutory ten-day notice.

THE COURT: If the State wants to rely on that presumption, but the State doesn't have to rely on that presumption. It makes the case easier for the State to prove, but the State doesn't have to do that.

MR. BELL: It doesn't have to do that, I know, in certain situations, but here is a case in which this man is — the operation of a criminal statute is sought to come into play just on the mere whim of an individual without any protection whatsoever. Either the statute, as we argued in the motion to quash, is defective, or else this whole procedure is wrong and unconstittuional.

THE COURT: I don't believe that. Of coures I will hear what counsel on the other side has to say.

MR. PITCHER: I will be very short, if Your Honor please. In other words for this motion to be worth even the breath it took to utter it it would have to be — Your Honor would have to decide that the State hasn't made out a prima facie case, and we certainly have. In other words if this man had not made an affidavit in my office, and if that warrant was not issued, there is a dog-gone good posibility this car would never have been returned, because by the testimony of Mr. Bowers himself he said he talked to this man on numerous occasions asking him to bring it back. He was willing to leave it as a civil matter at that time, but when he

said finally, after about five or six talks with him over the telephone, if you don't bring the car back by the 16th of January, which is tomorrow, I am going to have to turn it over to the District Attorney's office, the remark was well why don't you just do that, and then when it was done on the 18th, three days later, he still doesn't bring it in until he knows the warrant is out for his arrest, and then he brings it in and gives a bad check, by the testimony of Mr. Bowers, to pay the bill. Now, if Your Honor please, I respectfull submit that this so-called whim of an individual to effectuate a statute, as counsel has said, is sure the truth. It happens many, many times, we have many rape cases that never get to a Grand Jury because the whim of the individual just prevents her from testifying that she has ever been raped. It just so happens on many occasions where they do want to testify, then we go to court, but it is the whim of the individual. And this man, Mr. Bowers, all he had to do was come down, give us the facts, here is the situation, and, as District Attorney, I have got to tell him what laws, if any, have been violated, and I submit to Your Honor that these laws were well violated in this case.

THE COURT: I will say this, that when the information comes to the hands of the District Attorney that a crime has been committed the victim is no party to a criminal prosecution, as you well know. A criminal prosecution is a proceeding instituted and

carried on in the name of the State before a court of criminal jurisdiction for the purpose of bringing punishment to one who has violated a criminal law, the person injured by the commission of a crime is no party to the criminal proceeding, and his rights are in no wise affected by such proceedings or the results thereof, and, as you know, or may know, I know I know it because I have been District Attorney, very often when a crime has been committed the victim does not want a prosecution to go forth, and sometimes when people actually make an affidavit charging a person with the commission of a crime they change their mind and they come down and beg and importune the District Attorney to drop the charges, and they bring their friends in and write numerous letters, but they are not a party to it, they have nothing to do with it, it is in the discretion of the District Attorney. You might say it depends on his whim, because the law says he determines who, when, how he is going to prosecute. The law gives him that, subject only to the supervision of the Attorney General. Of course in going about that he to stick to the law and there has to be a criminal statute under which he can proceed, otherwise he would be violating the law itself. I think the State has made out a case at this point to my satisfaction and beyond a reasonable doubt, and I overrule the motion for a directed verdict.

MR. BELL: We have no witnesses to call:

DEFENDANT CLOSES

STATE CLOSES

TESTIMONY CLOSED

THE COURT: I was overruling the motion for a directed verdict, and counsel for the accused having now announced to the court that he has no proof to put on, the court does, because of the fact that the court is convinced of the guilt of the accused beyond a reasonable doubt, find the accused guilty as charged.

MR. BELL: We would like to except to the ruling of the court and judgment of the court, and ask to reserve a formal bill of exception. We would also like to have an opportunity to have the record made up. We do intend to file various post-trial motions and to appeal Your Honor's ruling.

HEARING CLOSED